
(2019) 04 CAT CK 0033

In the Central Administrative Tribunal

Case No : Review Application No. 56 Of 2019 In Original Application No. 3540 Of 2018

Neelam

APPELLANT

Vs

North Delhi Municipal Corporation

RESPONDENT

Date of Decision : 25-04-2019

Acts Referred:

Citation : (2019) 04 CAT CK 0033

Hon'ble Judges : V. Ajay Kumar, J; Aradhana Johri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This Review Application is filed against the order in O.A No. 3540/2018 pronounced on 22.01.2019. The relevant portion of the order which has been challenged is as follows :-

"12. In view of all the circumstances of the matter, that there is no allegation of mala fide, the applicant continues to hold the post of Deputy Nursing Superintendent and gets the same pay, as well as the fact that there are complaints against the applicant which are under inquiry, we do not deem it fit to interfere with the impugned order dated 12.09.2018. However, the respondents shall complete the inquiry against the applicant within one month and take appropriate action thereon. The O.A is dismissed with no order as to costs."

2. The principal ground raised in the R.A is that during the course of the arguments in the O.A, two judgments, in the case of Dr. D. P. Ray Vs. Municipal Corporation of Delhi and Ors. (O.A No. 1152/2009 decided on 15.12.2009), and Ramji Rai Vs. All India Institute of Medical Sciences (O.A No. 1302/2014 decided on 03.02.2015), which had been cited were lost sight of, in the order.

3. The judgments which have been taken into account in the said order are of R. Sudhakar Vs. M/s. Indian Immunologicals, Hyd., in W.P No. 9108/1995 and P. K. Chinnasamy Vs. Govt. of Tamil Nadu & Anr. (1987) 4 SCC 601 from the side of

the applicants and from the side of respondents, judgments in the case of Union of India & Ors. Vs. S. L. Abbas and Union of India Vs. Janardhan Debanath and another in (2004) 4 SCC 245, were cited.

4. Several other judgments filed by the applicants and respondents were not mentioned in the order because they cover the same points as the above cited judgments. However, since specific reference has been made in this Review Application that two judgments mentioned by the review applicant have not been discussed, these two judgments cited have been perused again.

5. In the case of Dr. D. P. Ray (Supra), para 20 reads as follows :-

"20. Furthermore, Chest Clinic Jhandewalan to which the applicant has been transferred from Hindu Rao Hospital, has full strength of staff as a CMO is already in position of said Clinic. There is no reference in the noting referred to above as to why another CMO is required to be posted at Chest Clinic, Jhandewalan. There is no material in the said noting indicating if requirement of Chest Clinic Jhandewalan warrants any increase in the said Clinic. Nor any such decision has been taken to increase the strength of Chest Clinic Jhandewalan. The noting does not indicate as to how the applicant would be replaced vis-a-vis the existing CMO in the Chest Clinic Jhandewalan upon his transfer thereto. Obviously, there can be only one CMO. If CMO is already in position, another person in the rank of CMO cannot hold equivalent ranking and obviously the applicant would be having a lower ranking unless the transfer order itself provides a higher ranking to the applicant therein. Such action is not sustainable in law in view of the decision of R. Sudhakar Vs. M/s Indian Immunological Hyderabad which has been referred to above. We find force in this from the decision of a Coordinate Bench of this Tribunal in the case of Dr. R. N. Bansal Vs. Municipal Corporation of Delhi (OA-289/2009 decided on 6.5.2009) wherein reliance has been placed on the case of R. Sudhakar (supra). It may be relevant to note in this regard that Dr. R. N. Bansal has also been transferred vide the same transfer order dated 12.01.2009 which has been impugned in these proceedings. On the other hand, ADC (Health) was conscious of non-existence of the post at Jhandewalan Clinic yet the post has not been transferred to Jhandewalan Clinic and the applicant has been allowed to draw salary from his existing place of posting."

(Bold added for emphasis)

It is clear from the perusal of para 20 that this judgment places reliance on the case of R. Sudhakar (Supra) which has already been taken care of in the order passed in O.A No. 3540/2018.

6. The discussion done in the Tribunal's order in O.A No. 3540/2018 is as follows :-

"6. Learned counsel for applicant has cited judgment in the case of R. Sudhakar Vs. M/s. Indian Immunologicals, Hyd. W.P No. 9108/1995 decided on 22.04.1997

and quoted the following paragraphs :-

"17. It is now well settled principle in administrative law, that an officer holding a particular rank/position can be transferred and posted only to a post which is equivalent to that post in all respects, otherwise, it amounts to effecting status held by the incumbent. I have no hesitation to hold that by the impugned order, the position of the petitioner is adversely effected, whereby he will be looked down by not only the employees of the respondent unit, but also by others in the Society."

7. However, in the present case, the applicant continues to be Deputy Nursing Superintendent and continuous to draw the salary of Deputy Nursing Superintendent. Therefore, it cannot be said that she has been reduced in rank."

7. In the case of Ramji Rai (Supra) reliance was placed on the judgment in the matter of P. K. Chinnasamy (Supra) wherein it was held that the posting of a public servant on transfer shall be on a post which is commensurate with his status. Further, in this matter, the basic case was one of harassment by a superior officer, who was one of the respondents and who had not denied the allegations in the O.A., therefore, mala fide was the ground taken on which the decision to quash the impugned order, was taken.

8. The case of P. K. Chinnasamy (Supra) has been discussed in the order under review, which reads as follows:-

"8. The second judgment that has been quoted is that of P. K. Chinnasamy Vs. Government of Tamil Nadu & ors., in (1987) 4 SCC 601, the facts of the case were that the applicant's promotion was delayed and even after that the State Government allowed the appellant's junior to officiate as Joint Transport Commissioner while the appellant who was a Deputy Transport Commissioner was consistently overlooked.

9. The circumstances of the present case are different from those of the P. K. Chinna Swamy's case, since the applicant was not overlooked for promotion to a higher post."

9. Admittedly, since no specific instance of mala fide has been attributed or admitted by the respondents, the decisions cited by the Review Applicant do not help her.

10. Apart from the averment that the two decisions referred to by the review applicant have not been taken into consideration while deciding the O.A, the applicant has only repeated the pleas taken in the O.A and raised no new ground in the R.A which may warrant review of the Tribunal's order.

11. In view of the above discussion, we find no merit in the R.A and the same is accordingly dismissed by circulation.