

(2019) 12 DEL CK 0362

In the Delhi High Court

Case No : Civil Writ Petition No. 13727 Of 2019

New Delhi Municipal Council

APPELLANT

Vs

Ajay Kumar

RESPONDENT

Date of Decision : 23-12-2019

Acts Referred:

Citation : (2019) 12 DEL CK 0362

Hon'ble Judges : G.S.Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Kaadambari, Sharad, Mansi, K. C. Mittal, Ruchika Mittal, Yugansh Mittal

Final Decision : Disposed Of

Judgement

G.S. Sistani, J

CM APPL. 55336/2019 (exemption)

1. Exemption is allowed subject to all just exceptions.

2. Application stands disposed of.

W.P.(C) 13727/2019

3. The petitioner is aggrieved by the order dated 04.12.2019 passed by Central Administrative Tribunal (the 'Tribunal'), by which interim relief has been granted in favour of the respondent.

4. The respondent is a Deputy Commandant in the ITBP. He was appointed as Chief Security Officer (CSO) by the petitioner/New Delhi Municipal Council (NDMC) on deputation basis in the year 2014. He served as CSO for five years. Upon relieving order having been issued to him on 03.12.2019 and further extension not being granted by the petitioner, the respondent approached the Tribunal by filing OA/100/3512/2019. The Tribunal has granted interim relief in favour of the respondent, which has led to the filing of the present writ petition

by the NDMC.

5. Ms. Kaadambari, learned counsel appearing for the petitioner submits that no doubt the petitioner had addressed a letter dated 22.07.2019 to ITBP seeking their 'No-Objection' but this was done only for the purposes of considering the respondent's case; and it is not that the NDMC had decided to extend the deputation period of the respondent. She submits that a Vacancy Circular was also published on 23.10.2019 inviting applications for the post of CSO, pursuant to which the name of one Shri Ashish Sethi has already been short-listed and is pending consideration for the post of CSO. Learned counsel for the petitioner further places reliance on the judgment in the case of Kunal Nanda v. Union of India & Ors., reported in (2000) 5 SSC 362, more particularly, paragraph 6, which we reproduce below:

"6. On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of ; either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in Rameshwar Prasad vs M.D., U.P. Rajkiya Nirman Nigam Ltd. and Others [1999 (8) SCC 381] is inappropriate since, the consideration therein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim."

6. Mr. Mittal, learned counsel for the respondent enters appearance on advance copy. He submits that in case the petitioner was not interested in granting extension to the respondent, there was no occasion for the petitioner to seek a 'No-Objection' from the ITBP by addressing communication dated 22.07.2019. Further, based on the communication dated 22.07.2019, the ITBP has in fact given their 'No-Objection' by letter dated 24.10.2019, which reads as under:

"Sub: Extension in terms of deputation in respect of Sh. Ajay Kumar, Deputy Commandant, ITBP, (Regt. No.028030098) to the post of Chief Security Officer on deputation basis in the New Delhi Municipal Council.

Sir,

With reference to your letter A-19011/264/2017-Secy-Estt dated 22.07.2019 on the subject cited above, concurrence of DG, ITBP is conveyed for extension in deputation tenure in r/o Sh. Ajay Kumar, Deputy Commandant with NDMC for one year (for 6th year) beyond 03.12.2019.

Sd/-

(O.P. Yadav)

Dy. Inspector General(Pers)"

7. Thereafter however, no administrative action has been taken. He submits that proper procedure has not been followed by the petitioner.

8. We have heard the learned counsel for the parties and have considered their rival submissions.

9. There is no doubt that the respondent has been on deputation from ITBP in NDMC for five long years. The only confusion which has been created, is by letter dated 22.07.2019, which we reproduce below:

"Subject: Extension in terms of deputation in respect of Shri Ajay Kumar, Deputy Commandant, ITBP, (Regt. No.028030098), presently on deputation with NDMC as Chief Security Officer

Sir,

I am directed to inform that Shri Ajay Kumar, Deputy Commandant, ITBP had joined NDMC on deputation as Chief Security Officer on 03.12.2014(AN). The term of 5th year deputation in respect of Shri Ajay Kumar is going to expire on 03.12.2019.

2. In term of DoP&T's guidelines contained in DoP&T OM No.6/8/2009-Estt.(Pay-II dated 18.05.2018, proposal of extension of deputation tenure beyond 5th is under consideration in NDMC and is required to be submitted to Ministry of Home Affairs for obtaining approval of the Competent Authority.

3. It is, therefore, requested that NOC along with Cadre Clearance with the approval of the Competent Authority in ITBP may be conveyed for the said extension in respect of Shri Ajay Kumar, Deputy Commandant so that proposal may be submitted to Competent Authority i.e. Ministry of Home Affairs for consideration/approval.

Yours faithfully,

Sd/-

(Pankaj Sharma)

Joint Director(Estt.)"

10. It would appear that if the petitioner was not interested in granting extension of the deputation to the respondent, there was no reason for the petitioner to have addressed such a communication to ITBP seeking their 'No- Objection'. However, it is settled law that to continue for long on deputation is not a vested right of a person. By the NDMC simply issuing letter dated 22.07.2019, it cannot be said that an offer was made to the respondent; or that any right had accrued in favour of the respondent. Even otherwise, by a subsequent act of the petitioner, a Vacancy Circular was published on 23.10.2019 inviting applications for the post of CSO. Moreso, before the matter was listed before the Tribunal on 04.12.2019, the relieving order of the respondent had already been passed by the petitioner on 03.12.2019, which reads as under:

"OFFICE ORDER

On completion of five years of term of deputation on 03.12.2019, Sh. Ajay Kumar, CSO is hereby repatriated and relieved from NDMC w.e.f. 03.12.2019 (AN) with the direction to report to his parent department i.e. Directorate General, ITB Police, Block-II, CGO Complex, Lodhi Road, New Delhi for further assignment.

2. This issues with the approval of Competent Authority.

Sd/-

(Sharad Kumar)

Joint Director(Estt.)"

11. Once the reliving order was passed by the petitioner, the relief sought could not have been granted by the Tribunal in favour of the respondent.

12. Accordingly, the interim relief granted by the Tribunal is set-aside. It is kept open for the Tribunal to examine as to whether proper procedure has been followed or not.

13. The writ petition stands disposed of in the above terms.

14. A copy of the order be given dasti to the parties under the signature of Court Master.

CM.APPL 55337/2019(stay)

15. The application also stands disposed of in view of the order passed in the present writ petition.