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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 2377/91

New Delhi, this the 11th day of January, 1994.

Hon'ble Mr Justice S.K.Dhaen, Vice Chairman
Hon'ble Mr B.K.Singh, Member(A)

Shri Ashok Kumar Gaur,
Assistant Engineer(Civil),
(through Ms Avnish Ahlawat,
Advocate). Applicant.

vs.

1. Delhi Administration through
the Chief Secretary,
5, Alipur Road, Delhi.
2. Shri Virender Singh,
Secretary(Irrigation & Flood),
5/9 Under Hill Road,
Delhi.
3. The Chief Engineer(Irrigation & Flood),
Delhi Administration,
IV Floor,
I.S.B.T. Building,
Delhi. Respondents
(through Mr Naresh Kumar, L.D.C.,
departmental representative of the
respondents).

ORDER (oral)

Per S.K.Dhaen, Vice Chairman

The petitioner was employed as Assistant Engineer(Civil) in the Supplementary Drainage Division No.1 in the office of the Chief Engineer (Irrigation and Flood), Delhi Administration. He was given a post of Assistant Engineer(Civil) in the Delhi Energy Development Agency(DEDA). He continued to be in DEDA. Some disciplinary proceedings were initiated against him by the Chief Engineer (Irrigation & Flood)(Respondent No.3). He came to this Tribunal by means of this O.A.

Initially
2. The reliefs claimed in the O.A. were primarily these:

- a) It may be declared that the petitioner stood absorbed in DEDA;

b) inquiry proceedings initiated by the Chief Engineer(Irrigation & Flood) may be quashed as they are without jurisdiction since the petitioner ceased to be an employee of that authority and became an employee of DEDA.

3. Shri Sewa Ram Sharma, the Chairman of the DEDA was impleaded as Respondent No.4 to this O.A. The Delhi Administration, Shri Virender Singh and the Chief Engineer(Irrigation & Flood) were cited as respondents No.1,2 and 3, respectively. Respondent No.1 was served with a notice under registered A.O., however respondents No.2 and 3 have not been served so far. Nonetheless, we find on record an affidavit of the petitioner that Respondents No.2 and 3 were served by Dasti summonses. The respondent No.4 put in appearance and filed a counter affidavit. One of the pleas raised by it was that this Tribunal had no jurisdiction over DEDA in the absence of a Notification under sub section(2) of Section 14 of the Administrative Tribunals Act. On 12.10.1993, the petitioner made a statement that the petitioner did not propose to prosecute this O.A. against respondent No.4. She prayed that the name of respondent No.4 may be struck off from the array of the respondents. This prayer was accepted. The Tribunal passed an order that the O.A. stands dismissed against respondent No.4.

4. In a miscellaneous application No.3619/93, we permitted the petitioner to amend this O.A. in so far as the reliefs claimed were concerned. In view of the amendment allowed, the relief is confined to the quashing of the inquiry proceedings.

initiated against the petitioner by respondent No.3 on the ground that the petitioner stood absorbed in DEDA as per orders of the Chief Engineer, Delhi Administration. The other relief sought is that it be declared that the petitioner is not an employee of Respondent No.3, and, therefore, no action can be initiated by that respondent against him.

5. In M.P.No.2545/92, filed on behalf of the petitioner, the prayer was that the Chairman DEDA, who is also the Secretary (Irrigation & Flood) (respondent No.2) should be directed to produce the file containing the notings of the Chief Secretary and the Lt.Governor. On 30.9.1992, this Tribunal directed Respondents No.1 to 3 to produce the relevant records for the perusal of the Court. Respondents No.1 to 3 are represented by Sh.B.R.Parashar, however, he is not present even though this O.A. has been called out in the revised list.

6. Shri Naresh Kumar, a Lower Division Clerk, in Delhi Administration(Sr.No.103) is present. He has produced the file, which contains photostat copies of certain documents. We have perused the same. We find that on 8.11.1989, the Chief Secretary made the following notes:

"I have perused the papers. The position as it emerges, particularly if looked at from the point of view of the official concerned, is somewhat different. In July, 1985 he joined DEDA on deputation and was selected by NBCC as Assistant Engineer in October, 1985. Right at that stage enough informal indication was given to him that DEDA would be willing to absorb him as Asstt.Engineer. It is understood that he even had the offer from NBCC extended from the normal of three months to six. Meanwhile the move in DEDA for his absorption was making progress and in June,

1986 a formal letter to that effect was sent to the Irrigation & Flood Control Department. In the Flood Control Department the Secretary approved the proposal in July, 1986. With that the matter should have been concluded. However, it seems that some representations were received by the Chief Secretary and the then Chairman DEDA/Secretary (I&F) put up the matter to the Chief Secretary in January 1987. The Chief Secretary did not direct that the absorption should not be undertaken but merely left it to the Chairman DEDA/Secretary(I&F) to take a view in both his capacities and arrive at a decision. In the file of the Irrigation & Flood Control Department the matter was again processed and put up to the Secretary(I&F) in May 1988 and the Secretary (I&F) in June 1988 granted his approval.

I am unable to figure out what imperfection, if any, remained in the absorption of Shri Gaur in DEDA. Nor do I understand as to why the matter should be reopened at this stage.

The fact remains that Shri Gaur had foregone the opportunity to join NBCC as Assistant Engineer way back in 1985 on the informal understanding, which later required a formal shape, that he would be absorbed in DEDA itself. To deny him the absorption now at this stage and thereby force him and to revert as Junier Engineer in the Irrigation & Flood Control Department, where he will have to languish in that post for a number of years, would be unfair.

We should not resile from the decision already taken to absorb Shri Gaur in DEDA.

Sd/-V.K.Kapoor
CS
8.11.1989 *

We also find that on 12.1.1990, the Chief Secretary reiterated the views expressed in the note dated 8.11.1989. We also find that on 2.6.1991, the Lt. Governor made the following notes:

* I have gone through this case of

Shri A.K.Gaur. It bristles with all kinds of problems from the very begining of the deputation to DEDA. The pendulum has been moving from one extreme to another until it finally settled with reverision of Shri Gaur to his parent department and in the process he has suffered, and on the face of it not without his own fault which started with his application for absorptien in DEDA. And the file is complete with moves and counter-moves which does not fit in with the functioning of an administrative unit.

But at this stage I would request that C.S. may kindly sort out the matter by calling a meeting of the Chairman DEDA, the Delhi Administration and Addl.Director Narayana and take a final view so that it may be settled finally in the public interest. Further, I have gone through the rules which do not rule out transfer on deputation which may mean absorptien also. But it shall be disposed of with justice to all."

7. In paragraphs 4.25, 4.26 and 4.27 of the O.A., there is a reference to the aforesaid file. In fact a part of the note of the Chief Secretary dated 8.11.1989 is quoted in paragraph 4.25. We have, therefore, no hesitation in taking the view that the photostat copies are genuine.

8. We have considered the matter carefully. We are of the view that in the absence of DEDA as one of the parties to this O.A., no effective judgment can be given. The petitioner is in a real predicament. This Tribunal has no jurisdiction over DEDA whereas no other Court, including the High Court, has any jurisdiction over Delhi Administration, Secretary (Irrigation & Flood) and the Chief Engineer (Irrigation & Flood). Under the circumstances, we feel that interest of justice requires that a

High Powered Committee, as suggested by the Lt.Governor in his note, aforementioned, may look into the matter and give a final decision. We feel that the petitioner has been harassed enough. We have no doubt that the Committee will meet expeditiously and give a considered decision preferably within a period of three months keeping in view the fact that the petitioner has resigned from Delhi Administration at the asking of respondents No.1 to 3.

9. With these observations, this O.A. is disposed of but without any order as to costs.


(B.K.Singh)
Member


(S.K.Chaon)
Vice Chairman

/sds/