

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 29/2014

New Delhi this the 25th day of April, 2016

**Hon'ble Mr. Justice M. S. Sullar, Member (J)
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Smt. Sadhna Mishra
W/o Shri Ajay Mishra
R/o H.No.B-57/58, Prem Nagar-I,
Kirari Suleman Nagar, North,
Delhi-110086. .. Applicant

(Argued by: Shri R.P. Singh, Advocate)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary,
I.P. Estate,
New Delhi.
2. The Deputy Commissioner North West,
Office of the DC (Election),
At Kanjhawala,
New Delhi.
3. The Assistant Electoral Registration
Officer (AERO),
Assembly Constituency-09,
Multipurpose Community Centre,
Mubarkapur Dabas,
Delhi. .. Respondents

(By Advocate: Shri N.K. Singh for Mrs. Avnish Ahlawat)

ORDER (ORAL)

Justice M.S. Sullar, Member (J)

The challenge in this Original Application (OA) filed by applicant, Smt. Sadhna Mishra, is to the impugned order bearing No.F./AC-9/AERO/2013/886-889 dated 14.08.2013 (Annexure A-1), passed in partial modification of order No.

F./AC-9/AERO/2013/859-862 dated 31.07.2013 (Annexure A-4) whereby her services were summarily terminated by Assistant Electoral Registration Officer (AERO).

2. The case set-up by the applicant, in brief, insofar as relevant, is that she was initially appointed as a Peon on the monthly salary of Rs.4500/- per month by AERO (respondent No.3) on part time basis in the month of September, 2009. She performed her duties as a Peon with due diligence and to the satisfaction of her superiors. Even AERO has issued certificate dated 21.05.2013 (Annexure A-4/1) certifying that her work as part time Sweeper has been found satisfactory and she can be continued for further service. She actually worked for more than 4 years in all without any break with dedication and sincerity.

3. Thereafter, in the month of February, 2010 (after six months), she was stated to have assigned the duty of Sweeper instead of Peon and her salary was reduced to Rs.1600/- from Rs.4500/- per month. She requested her superior officer in this regard but respondent No.3 informed that it was departmental procedure and her salary shall be refixed. Applicant is 8th standard pass as per the certificate (Annexure A-2) and does not know the departmental procedure as well as the bye-laws of the Election Commission. Further, she waited for a long time and always remained punctual and regular in her duties. The

respondents did not pay any heed to her problem. She made various representations (Annexure A-3 Colly) but nothing fruitful has come out and no action was taken by the authorities to redress her grievance.

4. According to the applicant, on 31.07.2013 she received an order (Annexure A-4) whereby her services were surrendered to SDM (Election) District North West without any rhyme and reason. She was further shocked to receive impugned partial modification order dated 14.08.2013 (Annexure A-1) issued by AERO (respondent No.3) by means of which her services were illegally and in a mechanical manner terminated with effect from 31.07.2013 (Annexure A-4). She is a poor woman having three school going children and her husband is also mentally sick. She has no other source of income to earn her livelihood and maintain her family. Neither any show cause notice was issued nor any opportunity of being heard was provided to her before passing the impugned termination order although she has regularly worked on the post of Peon since 2009 and subsequently assigned the work of Sweeper on a monthly salary of Rs.1600/- per month.

5. The impugned termination orders and action of respondents of reducing her salary to that of a part time Sweeper are termed to be arbitrary, illegal and against the principles of natural justice. She has filed the statutory

appeal dated 26.08.2013 (Annexure A-5) before Respondent No.2 but the Appellate Authority did not pass any order in the appeal. Thereafter, she has sent an application dated 24.09.2013 (Annexure A-7) under the Right to Information Act, 2005 to Respondent No.2. She has received a notice dated 25.10.2013 (Annexure A-8) calling her to appear in person on 06.11.2013. She appeared in person, explained the matter and she was assured that her appeal will be decided very shortly but the same has not been decided by the Appellate Authority so far.

6. On the basis of the aforesaid grounds, the applicant sought to quash the action of the respondents and impugned orders in the manner indicated hereinabove, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

7. The contesting respondents refuted the allegations and filed the reply, *inter alia*, pleading certain preliminary objections of maintainability of the OA, cause of action of the applicant and jurisdiction of this Tribunal on merits. It was pleaded that applicant was not an employee of the contesting respondents. She was engaged through Vendor M/s Prince Services Agency by way of work order dated 29.01.2008 (Annexure R-1). Services of the Vendor M/s Prince Services were discontinued with effect from 31.01.2009 (Annexure R-2). Thereafter, DEO's were directed to make alternative

arrangement till such time a fresh agency is appointed. As such, as an alternate arrangement, due to exigencies of service, the applicant was engaged as part time Sweeper in accordance with order dated 03.09.2009 (Annexure R-3).

8. According to the respondents, subsequently the behaviour of the applicant was not found satisfactory and on several occasions she was found creating a ruckus in the department on the issue of her post having been changed from Peon to that of Sweeper as well as drastic reduction in her salary. Hence, in order to maintain a harmonious environment in the office of VREC, Mubarkapur Dabas, it was decided not to continue her service as a part time Sweeper. As such, her services were terminated vide order dated 30.10.2013 (Annexure R-4). The contesting respondents have stoutly denied all other allegations contained in the OA and prayed for its dismissal.

9. Controverting the allegations contained in the reply of the respondents and reiterating the grounds of OA, the applicant filed her replication/rejoinder. She has also filed additional affidavit dated 27.03.2015 that she got a salary of Rs.2800/- vide Cheque No.20911 for the month of September and October 2010 and was also given the cheque bearing No.16440 for a sum of Rs.1400/- and Rs.9600/- vide cheque No.2610 dated 25.03.2011 for six months. She has also

annexed copy of the statement of accounts with the said affidavit. That is how we are seized of the matter.

10. Having heard the learned counsel for the parties and after having gone through the records, we are of the considered opinion that the present OA deserves to be allowed for the reasons mentioned herein below.

11. A bare perusal of the pleadings of the parties would reveal that the applicant is claiming herself to be a part time employee of AERO (respondent No.3) whereas respondents have pleaded that she was engaged through an outsourcing agency M/s Prince Services. Meaning thereby, the facts of the case are neither intricate nor much in dispute.

12. Such this being the position on record, the sole issue that arises for determination in this case is as to whether applicant was an employee of AERO (respondent No.3) or was engaged through as outsourcing agency.

13. Having regards to the rival contentions of the parties, we are of the firm view that the applicant was appointed by respondent no.3 and was not engaged through any outsourcing agency.

14. At the very outset, it will not be out of place to mention here that although the applicant claimed that she was appointed as Peon at a monthly salary of Rs.4500/- per month and subsequently brought down to the post of a part time Sweeper at the monthly salary of Rs.1600/- per month.

But no cogent material is forthcoming on record in this regard. She has miserably failed to prove that she was appointed as peon on the monthly salary of Rs.4500/- per month by the respondent No.3. Even as per her additional affidavit, she got a salary of Rs.2800/- vide Cheque No.20911 for the month of September and October 2010 and was also given the cheque bearing No.16440 for a sum of Rs.1400/- and Rs.9600/- vide cheque No.2610 dated 25.03.2011 for six months.

15. At the same time, it stands established on record that she was appointed by respondent No.3 as a part time Sweeper in the month of September, 2009. Even the respondents have acknowledged her working as a part time Sweeper. The respondents have paid her salary for relevant period by way of pointed cheques for her working as a part time Sweeper.

16. As is evident from the record that the applicant was working in the office of Chander Bhushan, AERO, AC-9 (Kirari) and who has passed the impugned order dated 31.07.2013 (Annexure A-4) which reads as under:-

“F.No./AC-9/AERO 2013/859-862

Date:31.07.2013

ORDER

As discussed with ERO, AC-9, services of Smt. Sadhna, P.T. Sweeper is hereby surrender with SDM (Election), District North-West with immediate effect.

Sd/-31.07.2013
(Chander Bhushan)
AERO, AC-9 (Kirari)
AC-9 (Kirari)

Multi Purpose Community Center Mubarak Pur Dabas, Delhi-81”.

Similarly, he passed the following impugned order dated 14.08.2013 (Annexure A-1):-

“F.No./AC-9/AERO/2013/886-889 Date:14.08.2013

ORDER

In partial modification of order No. F.No./AC-9/AERO 2013/859-862 dated 31.07.2013, services of Smt. Sadhna, P.T. Sweeper may be read as terminated w.e.f. 31.07.2013 in place of Surrender of services.

Rest of the contents remains the same.

17. Moreover, in pursuance of the interim order dated 10.12.2015, the respondents filed additional affidavit to clarify this situation. The additional affidavit conceals more than it reveals. In fact, the respondents have only reiterated their pleadings contained in the counter reply in the additional affidavit. Be that as it may, it remains an unfolded mystery as how even after discontinuing the services of M/s Prince Services w.e.f. 31.01.2009, the applicant has continued to work in the office of respondent No.3 till 31.10.2013 when her services were purported to have been discontinued vide order (Annexure R-4). It clearly indicates that indeed applicant was appointed by respondent No.3 as a part time Sweeper in the month of September, 2009 and they have pleaded a contrary stand in the counter reply and in the additional affidavit in this connection.

18. In case the applicant was not part time Sweeper/employee, there was no occasion or reason for respondent No.3 (AERO) to pass the indicated impugned orders or to issue certificate dated 21.05.2013 (Annexure A-4/1) to the effect that the work and conduct of the applicant was found satisfactory and she should be continued in service and to pay her salary for the relevant period by virtue of above mentioned cheques. If the applicant was engaged through an outsourcing agency, then the agency ought to have paid her wages. Thus, if the entire indicated material/evidence on record as discussed hereinabove is put together, then the conclusion is inescapable and irresistible that the applicant was engaged as a part time Sweeper/employee directly by the respondents. She was not engaged through any outsourcing agency.

19. Therefore, once it is held that the applicant was a part time employee/Sweeper engaged directly by the respondents then the next question naturally falling for determination would be as to whether the respondents can summarily terminate her services without following the due legal procedure. The answer must obviously be in the negative. The respondents cannot legally terminate the services of the applicant by way of the impugned order dated 14.08.2013 (Annexure A-1) in the garb of partial modification of

impugned order dated 31.07.2013 (Annexure A-4) and that too without issuing any show cause notice to the applicant.

20. This is not the end of the matter. At the first instance, the services of the applicant were stated to have been terminated with effect from 31.07.2013 vide impugned order dated 14.08.2013 (Annexure A-1). On the other end, it has been stated by the respondents in the reply that it was consciously decided that continuation of her services as part time Sweeper is no more required. If the services of the applicant has already been terminated with effect from 31.07.2013 by order (Annexure R-4), there was no occasion for the respondents to pass another order dated 31.10.2013 (Annexure R-4) to discontinue her services, which itself is self contradictory creating serious doubt in the matter.

21. There is yet another aspect of the matter which can be viewed entirely from a different angle. As discussed hereinabove, it is not a matter of dispute that the applicant worked with the respondents from September, 2009 to 31.10.2013, i.e., about 4 years when her services were summarily terminated vide the impugned order dated 14.08.2013 (Annexure A-1) in the garb of partial modification of earlier impugned order dated 31.07.2013 (Annexure A-4) even without issuing any show cause notice or affording any opportunity of being heard to her. The reason for termination as pleaded in the reply is that "the services as well as the

behaviour of the applicant was (sic) not satisfactory. On several occasions she was found creating a ruckus in the department as to her post being changed from that of a peon to that of a sweeper as well as change of her salary. Hence, in order to maintain a harmonious environment in the VREC, Mubarakpur Dabas, it was unanimously decided not to continue her services as a part time sweeper. As such, it was decided not to continue with the services of the applicant". It is also so described in a stigmatic termination order Annexure R-4.

22. Meaning thereby, the respondents have terminated the services of the applicant on the ground of her lack of sincerity in performance of her duty and misconduct, which amounts to casting stigma on her. Hence, her services cannot summarily be terminated except after following the due process viz. issue of show cause notice, conduct of an enquiry, giving her opportunity of being heard. Since the applicant has been denied her constitutional right of departmental enquiry, the impugned orders cannot legally be sustained.

23. Therefore, we are of the considered opinion that the impugned orders are illegal, non-est in the eyes of law and deserve to be quashed in the obtaining circumstances of the case.

24. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

25. In the light of the aforesaid reason, the OA is allowed and the impugned orders dated 14.08.2013 (Annexure A-1) and 31.10.2013 (Annexure R-4) are hereby set aside. The respondents are ordered to reinstate the applicant in service with immediate effect and with all consequential benefits. No costs.

(K.N. SHRIVASTAVA)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

Rakesh