

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.716/2018
MA No.918/2018
MA No.919/2018
MA No.1116/2018

Reserved on: 08.03.2018
Pronounced on: 13.03.2018

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Niraj Kumar Sinha
S/o Lt. Sh. N.K. Prasad,
R/o Qtr. No.21, VRC Campus,
9 to 11 Vikas Marg,
Karkardooma, Delhi – 92.Applicant

(By Advocate: Sh. Rajiv B. Samaiyar)

Versus

1. Ministry of Labour & Employment,
(Director General of Employment)
Government of India,
Sharm Shakti Bhawan,
New Delhi – 1 through
Under Secretary.
2. National Career Service Centres for
Differently Abled,
Ministry of Labour & Employment,
Government of India,
Plot No. 9,10 &11,
Vikas Marg, Karkardooma,
Delhi – 110 0092
Through Director (Reheb.)
3. Harvir Singh,
S/o Q.No.18, Type-III
VRS Campus, Plot No.9,10,11,
Karkardooma, New Delhi.Respondents

(By Advocate: Ms. Anupma Bansal and Sh. Yogesh Kumar)

O R D E R

By Hon'ble Mr. Uday Kumar Varma, Member (A):

MA No.918/2018

This MA has been filed by one Harvir Singh for impleadment as an Intervener in OA No.716/2018 claiming him to be a necessary party. He has submitted that while working in National Career Service Centre of DA [hereinafter referred to as 'NCSC of DA'], Delhi as UDC was appointed in NCS Centre for SC/ST on transfer basis on 14.03.2016 retaining his lien in the parent department for two years. Consequently, the original applicant was transferred on his own request on medical grounds to the post of Upper Division Clerk [hereinafter referred to as 'UDC'] vacated by the applicant in this MA. Now, the applicant in the MA has been reverted to his parent department but he is being denied to perform his duties because of the interim order dated 12.02.2018 passed by this Tribunal. Therefore, he being affected by the above interim order, is the necessary party to be impleaded in this OA.

2. For the above reasons, we are of the view that the MA deserves to be allowed and the applicant in this MA be impleaded as intervener in the OA. MA stands allowed accordingly.

OA No.716/2018

3. Brief facts of the case are that the applicant was initially selected for the post of Lower Division Clerk [hereinafter referred to as 'LDC'] through Staff Selection Commission and accordingly joined Ministry of Finance, Department of Economic Affairs on 17th June, 1994. The applicant submits that due to family responsibilities and other unavoidable reasons, he resigned from the above post and joined Vocational Rehabilitation Centre for Handicapped [hereinafter referred to as 'VRC Handicapped'], Patna on transfer basis on 01.06.1998. He was subsequently promoted to the post of UDC on 05.05.2003 in VRC Handicapped, Patna. It is the contention of the applicant that since then, apart from performing the duties of the said post, he has also been discharging the functions of LDC-cum-Cashier to the satisfaction of his superiors. It is further submitted that in the year 2014, the applicant suffered various ailments and got severe disease of Cardiac suzerain and neuro problem treatment of which was being taken by him either in Delhi or Vellore and it was becoming difficult for him to take better treatment because of his posting at Patna. He, therefore, submitted a representation for transfer from his parent department to VRC Handicapped, Delhi which was

accepted by the competent authority and he was posted to VRC Handicapped, Delhi to the post of UDC vide order dated 29th July, 2016 vacated by the intervener, who had been selected on transfer to the NCSC of DA, Delhi. After having been transferred, the applicant joined on 16.08.2016.

4. Perusal of records reveals that the borrowing department reverted the intervener vide order dated 15.01.2018 enabling him to join the post of UDC in his parent department. It is also seen that when the said reversion order of the intervener came to the notice of the applicant, he immediately went on leave and, therefore, could not be relieved. Meanwhile, the applicant approached this Tribunal by way of instant OA and got the interim order in his favour vide order dated 12.02.2018, relevant part whereof reads as under:-

“...As till date the applicant has not been relieved, status-quo be maintained in respect of the applicant as on today.”

5. Resultantly, the intervener and the respondents have filed their respective Miscellaneous Applications being MA Nos. 919/2018 and 1116/2018 for vacation of the interim order passed by this Tribunal on 12.02.2018 which are also pending adjudication. The intervener in his MA has stated that the applicant in the OA was not fulfilling the

ingredients required for grant of interim relief as the applicant was neither having any *prima facie* case nor balance of convenience in his favour nor any irreparable loss was being caused to him whereas it is the intervener who has been greatly affected by the interim order as he is deprived of joining his parent department to the post of UDC despite having lien over there.

6. The respondents have submitted that the applicant has concealed the material facts from the notice of this Tribunal and got stay order. It is submitted that the applicant is the permanent employee of NCSC for DA, Patna and was promoted as UDC w.e.f. 05.05.2003 whereas the intervener-UDC is the permanent employee of NCSC for DA, Delhi and both the departments have separate seniority of their employees which determine further promotions. It is further submitted that the intervener was selected for appointment on transfer basis to the post of UDC at NCSC for SC/ST, Delhi subject to condition that he will be on probation for a period of two years from the date of his joining the post and will be liable to be reverted back to his parent department at any time during the period of probation if his work and conduct is not found satisfactory. Meaning thereby he was holding the lien on the post of UDC in his parent department. As

the applicant was suffering from various ailment and was under treatment in Delhi, he requested for transfer to NCSC of DA, Delhi, which was acceded to by the competent authority and he was accordingly transferred to NCSC of DA, Delhi on his own request on the post of UDC vacated by the intervener on his appointment to NCSC of DA for SC/ST, Delhi. It is the contention of the respondents that as the intervener has now been reverted to his parent department where he is holding lien, the applicant has no right of permanent stay on the single post of UDC. Therefore, he has rightly been transferred to his parent department vide order dated 06.12.2018. The respondents, however, add that the applicant very cleverly went on leave and approached the Tribunal for getting stay and succeeded too in his design. The respondents submit in view of the factual position, which the applicant had not brought before the Tribunal, the interim order dated 12.02.2018 deserves to be vacated and even the OA itself is bereft of merit and the same also needs to be dismissed.

7. The respondents have also filed a short reply in the OA reiterated the same grounds as have been taken in the reply to the MA for vacation of stay order.

8. We have heard the learned counsel for the parties and perused the records of the case.

9. The only question that needs consideration is that whether the applicant, who came on transfer to NSCS of DA, Delhi from NSCS of DA, Patna on personal request on account of his illness, has any indefeasible right of permanent stay over the post of UDC over which the intervener apparently holds lien.

10. To examine this issue, it is necessary to go through the rule position. The recruitment rules (Annexure R-1 to the Reply) shows that there is one post of UDC for each VRC (now known as NCSC for DA) subject to variation dependent on workload. It is also made clear at the time of arguments that each VRC/NCSC for DA has its own cadre of LDCs, UDCs and Office Superintendents and, therefore, promotions can take place only within one and particular VRC/NCSC for DA. It is, therefore, difficult to conceive from these rules as to how on transfer a post, which is earmarked for that particular NCSC for DA, may be permanently filled, which seems the claim of the applicant herein. The fact of the matter seems to be that since there was a vacancy in NSCS for DA, Delhi on account of deputation of the intervener as he was sent on deputation to another organization, the applicant was accommodated

in Delhi keeping in mind his medical status. However, it turns out that the applicant is using this order as a ground to seek a permanent stay in Delhi for which he is not entitled to as per rules. His parent organization is NCSC for DA, Patna where he is working as UDC and he is to work in that NCSC only in normal circumstances. At the time of argument, learned counsel for the applicant asserted that the intervener has lost lien in NCSC for DA, Delhi as per some DOP&T circular. However, we cannot accept this ground because obviously, there was no order terminating the lien of the intervener. It is an admitted fact that the intervener had gone on deputation and had come back even before his deputation period was over and, therefore, he has the first right to be posted as UDC in NCSC for DA, Delhi.

11. In view of the above discussion, the relief claimed by the applicant is bereft of merit and deserves to be dismissed, which is accordingly dismissed. As the OA has been dismissed, MA No.919/2018 and MA No.1116/2018 seeking vacation of the interim order also stand disposed of accordingly. No costs.

(Uday Kumar Varma)
Member (A)

(V. Ajay Kumar)
Member (J)