

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 966/2016
CP No. 198/2016

Reserved on: 19.05.2016
Pronounced on: 12.07.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B. K. Sinha, Member (A)

Mukesh Kumar Dhiraan,
JE (Civil)
S/o Late Shri Hari Ram,
R/o H.No. 205, Akbarpur Mazra,
Delhi-110036.

-Applicant

(By Advocate: Mr. M.K. Bhardwaj)

Versus

1. East Delhi Municipal Corporation,
Through its Commissioner,
1st Floor, Plot No.419,Udyog Sadan,
Patparganj Industrial Area,
Delhi – 110 092.
2. The Additional Commissioner (Engg.)
East Delhi Municipal Corporation
1st Floor, Plot No.419,Udyog Sadan,
Patparganj Industrial Area,
Delhi – 110 092.
3. The Assistant Commissioner (Engg.),
East Delhi Municipal Corporation
1st Floor, Plot No.419,Udyog Sadan,
Patparganj Industrial Area,
Delhi – 110 092.

-Respondents

(By Advocate: Ms. Sangeeta Rai)

O R D E R

By Dr. B.K. Sinha, Member (A):

The grievance of the applicant in this OA filed under
Section 19 of the Administrative Tribunals Act, 1985 is that

his services were terminated by the respondents in violation of conditions of appointment/extension as contained in order dated 28.04.2011.

2. Brief facts, simply stated, are that the applicant, an M.Tech, was appointed as Junior Engineer (Civil) [hereinafter referred to as JE (C)] in the respondent organization (MCD) in response to an open advertisement against clear regular vacancy but on contract basis vide letter dated 13.09.2006 for a period of one year following open selection process. When the services of the applicant were coming to an end by March, 2011, the respondents, after having found his work and conduct report upto the mark, extended the period till 31.03.2012. The applicant submitted that in the year 2010, there had been some vigilance enquiries against him and some other persons including the Executive Engineer (Civil). The matter was, however, presumed to have been closed as nothing more was heard in this regard. To the utter dismay of the applicant, the respondents vide order dated 08.07.2011 disengaged the services of the applicant.

3. Aggrieved, the applicant challenged the afore order dated 08.07.2011 before this Tribunal in OA No.2489/2011, which was disposed of vide order dated 11.12.2015 granting interim protection to the applicant. Thereafter, the services

of the applicant were extended regularly from time to time, the final being vide order dated 24.02.2015 extending his services from 02.04.2015 to 31.03.2016 with one day mandatory break at par with 29 other similarly placed junior engineers. However, on 19.02.2016, the services of the applicant were terminated purportedly pursuant to the directives of this Tribunal in OA No.2489/2011 on the ground that the applicant did not deserve to remain/continue as contractual JE in the interest of MCD/EDMC. It is this order that has been challenged in the instant OA and the applicant has been granted interim stay by this Tribunal vide order dated 10.03.2016, which continues to this date.

4. The grounds adopted by the applicant include that he has been working to the satisfaction of all since 2006 and yet his services have been terminated by a non-speaking and non-reasoned order dated 19.02.2016. In the second instance, the applicant submits that the respondents were not justified in terminating his services by referring to the order of this Tribunal as no such direction had ever been given by this Tribunal to that effect. The impugned order is also discriminatory as all others appointed along with the applicant have been allowed to continue in service which is tantamount to abuse of powers. The applicant further

argues that when the respondents on their own had decided not to act upon the earlier termination order dated 08.07.2011, it could not have become the basis of the impugned termination order dated 19.02.2016.

5. The applicant further submits that the order in question is stigmatic by nature and no such order could have been passed without having given an opportunity of hearing to him. Moreover, the respondents have not taken any action against others involved in the case. The applicant further submits that he had no role in the irregularities and being a JE on contract basis he could not have defied the orders of the Executive Engineer. Moreover, the applicant submits that he was due for regularization but has not been considered.

6. The respondents have filed the counter affidavit rebutting the averments of the applicant. The respondents have adopted the grounds of *res judicata* and constructive *res judicata* inasmuch as the applicant had earlier filed OA No.2489/2011 and the Tribunal while observing '*...that the term of contract of the applicant itself has come to an end already, however, the respondents are continuing the applicant in pursuance of the pendency of the OA*', disposed of the OA without any further orders and the respondents were left free to pass an appropriate order in accordance

with law. They further submit that the applicant cannot now re-agitate the issue of regularization on whatsoever grounds. The respondents further submit that the applicant had caused pecuniary loss of Rs. 4,61,196.93 to the Corporation by making payment to the contractors in the work which had not been executed at site. Proceedings were initiated against regular employees while the applicant being a contract employee was recommended for disengagement from service.

7. The applicant has filed a rejoinder denying that he had ever caused any loss to the respondent organization as he was not competent to give approval or make payment of any amount to contractors as he had worked under the direction of EE(C) and, therefore, cannot be held guilty for the same. The irregularities alleged against the applicant had in fact been committed by EE (C). The respondents have also ignored the fact that the applicant had been serving for the last ten years and was due for regularization.

8. We have carefully gone through the pleadings of rival parties and patiently heard the oral submissions advanced by the learned counsel on either side on the basis of which the following issues emerge for determination:-

1. *Whether the instant OA is hit by res judicata?*
2. *Whether there is any violation of contempt of courts?*

3. *Whether the impugned order will sustain being allegedly stigmatic?*

4. *What relief, if any, could be granted to the applicant?*

9. Insofar as the first of the issues is concerned, we start our examination by considering the letter of appointment of the applicant. Admittedly, the applicant had been appointed vide letter dated 13.09.2006 [page 26 of the paper book) which, *inter alia*, states as follows:-

- “1. *The engagement is purely on Contract basis for a period of one year or till such the post is filled up on regular basis or till further orders, whichever is earlier.*
2. *The engagement can be terminated at any time without assigning any reason.*
3. *The contract will stand automatically terminated after one year unless the same is further extended in writing.*

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xxx

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12. *If any irregularities/discrepancies are noticed, applicant will be liable for action under the provisions of Act/Rules/Codes etc. including dis-engagement of the Contractual Service in MCD.”*

10. Under the terms of the appointment letter, it is clear that the services were purely contractual subject to renewal on completion of every year. It would be terminated at any time without having assigned any reason for which termination simpliciter would have sufficed. However, what is more significant is that in case any irregularity/discrepancy is noticed, the applicant would be liable for

action under provisions of the Act/Rules/Codes including his disengagement of contractual services in MCD. In sum and substance of it, it is well admitted that the terms of appointment letter provide three modes of termination of services of a contractual employee i.e. (i) the contract is allowed to expire; (ii) the contract is terminated without assigning any reason; and (iii) where irregularities/ discrepancies are found, it is decided to terminate the term of contract. All these modes are valid. It is also an admitted fact that the applicant was stood charged with being involved in causing a pecuniary loss of an amount of Rs.4,61,196.93 and that departmental action had been taken against regular employees while the services of the applicant were terminated under the terms of his contract, which had admittedly been accepted and were binding against him. It is also significant to note that the applicant had not challenged his appointment letter or any of the terms of the contract while he has only challenged the termination order. Since the termination order has been issued under the terms of the contract operating between the parties, we feel that the terms of contract, particularly clause 12, needed to be challenged and set aside as the authority of termination of the applicant vide letter dated 13.09.2016 had been derived from the same, and without

challenging this, the applicant cannot challenge his termination which arises from the terms of contract.

11. Here, we take note of the fact that the applicant has already challenged his earlier termination letter dated 08.07.2011 in OA No.2489/2011, apart from prayer for regularization. In the instant OA as well, the reliefs prayed for are similar and identical as the main genesis of the order of Tribunal passed in earlier OA was termination letter dated 08.07.2011 and in the instant OA also, the principle relief relates to quashing of termination letter dated 19.02.2016. However, we notice that the reliefs prayed for relating to regularization is there in both the OAs i.e. in the instant OA and the OA which had been earlier decided by this Tribunal.

12. On the issue of *res judicata*, we take note of the decision in *M. Nagabhushana Vs. State of Karnataka and Others* [2011(3) SCC 408] wherein the Hon'ble Supreme Court has held as under:-

“12. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, ‘interest reipublicae ut sit finis litium’ which means that it is in the interest of the State that there should be an end to litigation and the other principle is ‘nemo debet bis vexari, si constet curiae quod sit pro una eadem causa’ meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive

determination of the questions litigated and should forever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.”

13. In the instant case, we are dissuading from holding the applicability of law of *res judicata* for the simple reason of the principal relief in both the cases being against termination order, as we have referred to above, and as the Tribunal's order dated 11.12.2015 passed in OA No.2489/2011 was not on merit but was rather process oriented. Therefore, the role of *res judicata* does not apply in the instant case. This issue is accordingly answered.

14. Here, we have already noted the arguments of the parties. While the applicant submits that his termination has been stigmatic as the same is based on the case that has been filed against him as well as some other regular employee in the respondent organization including the Executive Engineer (C). On the other hand the respondents

have argued that the termination letter has been issued in terms of clause (12) of the contract executed between the parties and, as such, it cannot be held to be stigmatic. While departmental action had been taken against regular employees, contract of the applicant had been terminated vide letter dated 19.02.2016 as per the terms of the contract.

15. We have also looked up the counter affidavit filed by the respondents in the earlier OA No.2489/2011 and found reference of the irregularities committed by the applicant and the enquiry that had been undertaken. The respondents in the said counter affidavit have submitted *'that the respondents have not violated terms & conditions of engagement of the applicant as contained in the offer letter dated 13.09.2006. As per column 12 of the letter dated 13.09.2006 the respondent is fully empowered to take action for disengagement of the applicant on being noticed the irregularities/discrepancies in performance of duties by the applicant and as per para 2 of the said letter the engagement can be terminated at any time without assigning any reason'*.

16. Here, in the instant case, we notice that the applicant's services had been extended till 31.03.2016 vide letter dated 24.02.2015. For the sake of convenience, the same is being reproduced hereunder:-

“The Commissioner, EDMC vide his order dated 16.09.2015 has accorded the Administrative approval for further extension of the 30 contractual Junior Engineers (Civil) and Junior Engineer (Electrical), working under the East DMC for a period of one year w.e.f. 02.04.2015 to 31.03.2016 with one working day as mandatory break after the expiry of last extension i.e. 31.03.2015.

The extension of engagement on contract basis upto 31.03.2016 is subject to the usual terms and conditions of their earlier engagement as Junior Engineer (Civil/Electrical).

All concerned Executive Engineer/HODs will ensure the availability of JE (Civil/Electrical) on contract and send satisfactory work and conduct report along with fresh contract agreement on a stamp paper of Rs.100/- of these JEs to the undersigned within 15 days of issue of this order failing which salary of these JEs (Civil/Electrical), engaged on contract basis will not be released.”

17. From the above, it is evident that the terms & conditions, as cited in the terms of contract of appointment stand proved, and there is much emphasis on the performance of employees under contract. It is also noted that in OA No.2489/2011 the Tribunal passed the following order:-

“Heard both the sides.

2. It is submitted that the term of the contract of the applicant itself has come to an end already, however, the 2 respondents are continuing the applicant in pursuance of the pendency of the OA.

3. In the circumstances, the OA is disposed of as no further orders are necessary. The respondents shall consider the case of the applicant and pass appropriate orders in accordance with law. No costs.”

18. It is clear from the above order that though the term of the applicant had expired, the respondents allowed the

applicant to continue in service in pursuance of the pendency of litigation. When the OA No.2489/2011 was disposed, though stating that no further orders were necessary, with a direction to the respondents to consider the case of the applicant and pass appropriate orders in accordance with law.

19. The order of termination dated 19.02.2016, which is reproduced below, is passed pursuant to the directives of the Tribunal contained in its order dated 11.12.2015 passed in OA no.2849/2011:-

“In pursuance to orders of Hon’ble Central Administrative Tribunal dated 11.12.2015 in OA No.2489/2011, the case of Sh. Mukesh Kumar Dhiraan, as contractual JE with regard to his retention/extension of his services has been considered by the Commissioner i.e. the Competent Authority. On examination of the entire facts and circumstances of the case, the Competent Authority is of the view that Sh. Mukesh Kumar Dhiraan, as contractual JE does not deserve to be remained/continued as JE contractual in the interest of MCD/EDMC. He further passed orders dated 17.02.2016 that the services of Shri Mukesh Kumar Dhiraan, as contractual JE is ceased to be extended further and stands terminated with immediate effect.”

Therefore, it cannot be said that the respondents have wrongly referred the Tribunal’s order in OA No.2849/2011 with a purpose to mislead the Tribunal. Though certainly the order could have been more than explicit, there is nothing wrong or illegal in making this reference which is very much on the cards. The impugned orders flows from the

Tribunal's order dated 11.12.2015. We also take note of the fact that the order of termination is dated 19.02.2016 while the term of contract of the applicant had been renewed till 31.03.2016. However, as we have already held the termination letter to be note out of orders, there is no irregularity which has been committed by the respondents.

20. Now, we take up the question of the impugned order being stigmatic. The only point that can be associated with stigma is a phrase 'as contractual JE does not deserve to be remained/continued as JE contractual in the interest of MCD/EDMC'. The contract of an employee can be discontinued/ disengaged/terminated by an order simpliciter. However, where the contract is being terminated, the services of employee have to be necessarily not to the satisfaction of the employee authority to warrant a termination. This termination, we have already noted, is under the provisions of the contract. Therefore, we do not think that any stigma is attached to the termination order except to say that the authority has not found the services of the applicant satisfactory in the interest of the respondent organization.

21. Now, we take up the issue of contempt of the Tribunal's interim order dated 10.03.2016 alleging that the respondents have not allowed the applicant to mark his

attendance. In this regard, we are of the opinion that since the OA itself is not sustainable, the contempt petition will also not sustain as of now.

22. In view of the above discussion, the basic ingredient of contempt is that there should be wilful disobedience to the orders of the judicial body in a manner so as to bring its prestige down in the public esteem.

23. Here, we find that the OA filed by the applicant is not sustainable and the respondents have genuinely pleaded that they have been implementing the orders of this Tribunal dated 11.12.2015 passed in OA No.2849/2011 and the termination of the applicant is the result of such implementation. Hence, we find that no case of contempt is being made out.

24. In conclusion, we find the order of termination dated 19.02.2016 legal and binding being passed under the terms of contract between the parties and there is nothing in the action of the respondents which may warrant initiation of contempt proceedings. Therefore, both the instant OA and CP are dismissed being devoid of merits. There shall be no order as to costs. The CP No.198/2016 filed in this OA i.e. OA No.966/2016 is accordingly closed and the contemnors

are discharged from whatever liabilities that they might have misused.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/AhujA/