

**Central Administrative Tribunal
Principal Bench**

MA No. 1022/2015 in
OA No. 1150/2014

Order reserved on: 17.03.2016
Order pronounced on: 31.03.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. V. N. Gaur, Member (A)

Rajan Tripathi
Aged about 53 years
S/o Sh. J.P.Tripathi
R/o 760, Vikas Kunj,
Vikas Puri,
New Delhi.

- Applicant

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

Versus

1. The Director
Local Bodies
Delhi Secretariat,
IP Estate, New Delhi.
2. The Commissioner,
South Delhi Municipal Corporation,
Civic Centre,
New Delhi.
3. Additional Commissioner (Engg.),
South Delhi Municipal Corporation,
Civic Centre,
New Delhi.
4. Additional Commissioner (Estt.),
South Delhi Municipal Corporation,
Civic Centre,
New Delhi.

- Respondents

(By Advocate: Sh. R.K.Jain)

ORDER**Hon'ble Shri V.N.Gaur, Member (A)**

The present MA has been filed by the applicant for execution of order dated 24.02.2015 in OA No.1150/2014 and CP No.259/2014 by releasing the salary to the applicant from June 2014 onwards and relieving him from South Delhi Municipal Corporation (DMC) to join East DMC for further joining his parent department, i.e., Government of Arunachal Pradesh. The prayer in the MA reads thus:

“In view of the facts and circumstances mentioned above it is most humbly prayed that this Hon'ble Tribunal may be pleased to direct the respondents to execute the order dated 24.02.2015 in OA No.1150/2014 in CP No.259/2014 by releasing the salary to the applicant from June 2014 onwards and relieving to join East DMC for further joining to parent department.

Such any further orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case be also passed.”

2. Learned counsel for the applicant giving the brief background of the case submitted that the applicant was working as Junior Engineer (JE) in the erstwhile MCD on deputation from Government of Arunachal Pradesh w.e.f. 04.09.2008. His deputation term was extended by Commissioner, East DMC by order dated 14.05.2012 for a period upto 31.03.2013 or till post of JEs was filled up through DSSSB in East DMC. The applicant was transferred to South DMC vide order dated 30.11.2012 but the same was revoked on 04.10.2013. The applicant filed OA No.

1150/2014 challenging the order revoking his transfer to South DMC. This Tribunal on 02.04.2014 ordered status quo to be maintained as on date. However, the respondents-South DMC vide order dated 05.06.2014 repatriated the applicant to his parent department, i.e., Government of Arunachal Pradesh. The applicant was relieved on 10.06.2014 directing him to report to Commissioner (PWD), Government of Arunachal Pradesh, Ita Nagar. Learned counsel submitted that the sequence of events, as narrated, would show that the respondents have flagrantly violated the order of the Tribunal of maintaining status quo. The implication of stay on the order dated 02.04.2015 was that the applicant should have been allowed to continue in South DMC. On 13.06.2014 while issuing notice in CP No.259/2014 as well as MA No.1753/2014, the Tribunal had expressed that it expected the respondents to comply with the interim direction issued earlier by the Tribunal in the main OA in true letter and spirit. On 08.09.2014 the Tribunal extended the interim order till the next date of hearing. By order dated 24.09.2014 the Tribunal had directed the respondents to pay salary to the applicant thereby implying that the applicant was continued in service of South DMC. In order dated 24.02.2015 while disposing of the main OA and the CP, the Tribunal again observed that in compliance of the orders of the Tribunal dated 02.04.2014, the applicant was continued in South DMC, and therefore, nothing survived in the

CP. The Tribunal also took note of the fact that the applicant had been repatriated vide order dated 05.06.2014 and the same was not questioned by the applicant, and therefore, the OA was dismissed as infructuous.

3. The learned counsel for the applicant further stated that in the reply filed by the South DMC in the main OA it had been stated that the South DMC was not the competent authority to issue order of repatriation of the applicant to his parent cadre, but later controveering their own stand they issued the order of repatriation on 05.06.2014. From the records it can be seen that the Tribunal had been consistently under the impression that the respondents had implemented the status quo order dated 02.04.2014 and accordingly ordered payment of salary. The respondents are, therefore, bound to pay salary to the applicant from 05.06.2014 onwards since the order of repatriation was passed in violation of the order of the Tribunal.

4. Learned counsel for the respondents submitted that the Tribunal had taken note of the repatriation order of 05.06.2014 while disposing the OA as CP as infructuous on 24.02.2015. The applicant had filed MA No.2463/2014 during the pendency of the OA with a prayer for direction to the respondents to release his salary. The Tribunal had also disposed of MA No.2463/2014 along with the OA without any order with regard to the payment

of salary. The present MA was, therefore, not maintainable. The respondents have already paid salary to the applicant till the date he was with them, i.e., 10.06.2014 and there were no pending dues on the part of the respondents to be paid to the applicant.

5. We have heard the learned counsels and perused the record. The prayer of the applicant is for issuing direction to the respondents for releasing his salary from June 2014 onwards and relieving him to join East DMC for further joining to parent department. It can be seen that the prayer made by the applicant is as vague as it can be. There is no averment in the MA whether he is continuing to work in South DMC. In support of his contention the applicant has relied only on the orders passed by this Tribunal wherein either the Tribunal had expected the respondents to implement the status quo order or extended that order from time to time. But it cannot be ignored that this Tribunal in its order dated 24.02.2015 had taken note of the fact that applicant had already been repatriated to the parent Department in June 2014 and accordingly dismissed the OA as infructuous. It was also noted that since the applicant was continued in SDMC, nothing survived in the CP. It is apparent that continuation of the applicant from the date of order of status quo till the date of repatriation in SDMC was considered by this Tribunal as compliance of the status quo order and so the CP was closed. At this stage in the face of aforesaid judicial cognizance it

cannot be argued that the applicant continued to work with SDMC beyond the date of being relieved i.e. 10.06.2014. The prayer made by the applicant implies that he is continuing in South DMC and will join East DMC after a relieving order is issued by the South DMC. He can proceed further to join parent department only thereafter on being relieved by East DMC. However, in the light of this Tribunal's order dated 24.02.2015, the scenario developed by the applicant is only fictitious. There is nothing on record to show that the applicant had continued to work in South DMC after 10.06.2014. With regard to the argument of the learned counsel for the applicant that respondents - South DMC have committed contempt by issuing his repatriation order while submitting itself that it did not have power to repatriate the applicant, it is observed that this issue has already been raised in the CP No.259/2014 which has been closed on 24.02.2014. It is further noticed that the applicant had made a request for his repatriation on 28.03.2014 and gave a reminder on 16.05.2014, after the status quo order passed by this Tribunal on 02.04.2014. The respondents have thereafter issued the repatriation order on 05.06.2014. It shows that the applicant himself was not insistent on the compliance of status quo order as it was understood by him.

6. We, therefore, do not find any evidence on record to show the precise period during which the applicant has worked with

South DMC after 10.06.2014 and could legitimately claim the salary for. MA is, therefore, dismissed as devoid of merit.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

March 31, 2016

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