

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.2421/2016
M.A.No.9/2017

Order Reserved on: 03.01.2017
Order pronounced on 05.01.2017

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

Monu

Age about 35 years, Post: OTA
W/o Sh. Sanjay Kumar Sharma
R/o G-91, Sarojini Nagar
New Delhi.

... Applicant

(By Advocate: Shri Piyush Gaur)

Versus

1. Commissioner
South Delhi Municipal Corporation
9th Floor Civic Centre
New Delhi.

2. The CAMO
Central Zone
Lajpat Nagar
New Delhi.

3. The Additional DHA
Central Zone
Lajpat Nagar
New Delhi.

... Respondents

(By Advocate: Shri R. K. Jain)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a contractual OT Assistant under the respondent - South Delhi Municipal Corporation, filed the OA, seeking the following relief(s):

i) Quash and set aside the order dated 01.04.2016 passed by the Respondents.

ii) Respondents be immediately directed to release the unpaid salary with interest at the rate of 18% per annum as per details mentioned in the **Annexure No.9**, the respondents be further directed to pay salary to the applicant regularly every month.

iii) All consequential benefits may be granted to the Applicant.

iv) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the Applicant.

v) Cost of the proceedings be awarded in favour of the Applicant and against the Respondents."

2. It is submitted that the applicant was appointed as OT Assistant, on contract basis, on a consolidated pay of Rs.5000/- per month, initially for a period of six months, vide Order dated 10.05.2002. Accordingly, she joined at Kasturiba Hospital on 21.05.2002. Vide Annexure A2, Office Order dated 22.11.2002, the contract of the applicant along with 21 others, was extended till such time the regular incumbents are made available by the DSSSB. Accordingly, the applicant has been working as OT Assistant, on contract basis, till date.

3. It is further submitted that during November, 2012, as the applicant was pregnant applied for granting of Medical Leave and after availing of 12 months of Maternity leave the applicant reported for

duty on 1.2.2013. Again, due to her ill-health, i.e., low back ache, etc. she went on leave for certain period, thereafter. On being declared medically fit, the applicant reported for duty on 31.08.2013. Since the respondents have not properly granted the leaves such as Maternity Leave, Medical Leave, Earned Leave, etc., during the aforesaid period, as entitled by her, and not paid the salary for the said period, and having received no response for her representations, she filed OA No.645/2015 which was disposed of by an order dated 17.02.2015 (Annexure A6), as under:

“Heard the learned counsel for the applicant.

2. The applicant has filed the present OA seeking the following relief:

(i) Respondents to be directed to release the salary for the period from 02/11/2012 to till date and pay the interest on same @ 18% per annum, on the account of delay.

(ii) All consequential benefits may be granted to the applicant.

(iii) Any other relief, which this Honble Tribunal may deem fit and proper in the circumstances of the case, may also be passed in favour of the applicant.

iv) Cost of the proceedings be awarded in favour of the applicant and against the respondents.

3. It is submitted that the applicant made a number of representations ventilating her grievances vide Annexure A-5 colly. However, the respondents have not passed any orders thereon till date.

4. In the circumstances, the OA is disposed of at the admission stage itself, without going into the other merits of the case, with a direction to the respondents to consider the representations of the applicant and to pass an appropriate speaking and reasoned order thereon, in accordance with law, within three months from the date of receipt of a copy of this order. No order as to costs.”

4. The CP No.407/2015 in OA No.645/2015, filed by the applicant, alleging non-implementation of the aforesaid Order was closed by an order dated 04.04.2016, as the respondents have passed a speaking order considering the representations of the applicant on 01.04.2016.

Questioning the said speaking order, the applicant preferred the present OA, claiming the relief(s) as indicated above.

5. The respondents, vide their counter affidavit, dated 07.11.2016, submitted that the salary of the applicant for the period from 02.11.2015 to 31.07.2016 has already been released through ECS. Again, the salary of the applicant from 01.08.2016 has been released vide Order dated 30.08.2016. Accordingly, it is submitted that since the respondents have released the salary dues of the applicant, the OA may be dismissed as infructuous.

6. Heard Shri Piyush Gaur, the learned counsel for the applicant and Shri R.K.Jain, the learned counsel for the respondents, and perused the pleadings on record.

7. Shri Piyush Gaur, the learned counsel for the applicant, while not disputing the stand of the respondents, to the extent of payment of some amount towards the salary of the applicant, upto 30.08.2016, however, submits that the respondents have not paid the full salary of the applicant, as claimed by her in Annexure A9 to the OA.

8. A perusal of Annexure A9 indicates that the same is only a statement prepared by the applicant showing that from November, 2012 to April, 2016, the applicant was paid less amount when compared to the salary of other OT Assistants also working on contractual basis and were appointed along with the applicant. It is admitted by the applicant that she has not furnished the said detailed

statement claiming various amounts during the said period towards balance payment of her salary along with any of her representations till date to the respondents, and that she filed the said statement, for the first time, along with this OA only. However, the respondents in their counter denied the liability of payment of any additional amount to the applicant towards her salary till 30.08.2016 and also stated that there is no other OT Assistant, appointed along with her, is working in South Delhi Municipal Corporation, and hence, there cannot be any comparison with any other contractual OT Assistant appointed along with the applicant.

10. The pleadings of the OA does not indicate that which contractual OT Assistant is being paid more salary than the applicant by the respondent-South Delhi Municipal Corporation. It is also not forthcoming whether any other Municipal Corporation of Delhi is paying more salary to any of its contractual OT Assistants.

11. In the circumstances, the ends of justice would be met, if the OA is disposed of by permitting the applicant to make an appropriate representation ventilating her grievances, if any, with regard to payment of full or part of salary for any of the period she worked, after adjusting the amounts already paid by the respondents, by furnishing full details of the period and the due thereon, within a period of two weeks from the date of receipt of a copy of this order, and on receipt of such a representation, the respondents shall consider the same and

pass appropriate orders, within 60 days therefrom, in accordance with law. No costs.

12. Pending MAs, if any, stand disposed of.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

/nsnrvak/