

**Central Administrative Tribunal
Principal Bench**

OA No.3824/2014

New Delhi this the 19th day of August, 2016.

***HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)***

Dr. Manoj Aggarwal,
S/o Sh. A.L. Aggarwal,
R/o H.No.69, Shilver Park,
Shivpuri, Delhi.

-Applicant

(By Advocate Shri H.K. Gangwani)

-Versus-

EDMC & Ors.

1. The Commissioner,
East Delhi Municipal Corporation,
Patpargang, Delhi.
2. The Medical Superintendent,
S.D.N. Hospital, Shahdara,
Delhi.

-Respondents

(By Advocates Shri D.K. Devesh with Shri Suprabh Kumar
Roshan)

O R D E R (ORAL)

Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for grant of the following reliefs:

“i) To allow this original application.

- ii) To quash/set-aside the order of termination dated 16.6.11 passed by the respondent no-2 with full back wages and consequential relief.
- iii) To quash/set aside the order of the appellate authority order dated 17.4.14 in the interest of justice.
- iv) Pass any other order or remedy in favour of the applicant and against the respondents which this Hon'ble Tribunal may deems fit and proper. It is existing facts and circumstances of this case.””

2. The brief facts of this case are as under.

2.1 The applicant was appointed as a Senior Resident in Pediatrics Department of Swami Dayanand Hospital, Shahdara, Delhi under the then Municipal Corporation of Delhi (MCD) on regular basis vide appointment letter dated 11.05.2010, initially for a residency period of one year. Prior to that, he had been engaged by the said hospital as a Senior Resident, on ad-hoc basis, between April, 2008 to June, 2010 in 10 different spells of 44 and 89 days with a day's break between the two spells. Before his last extended period of engagement as Senior Resident, on ad-hoc basis could end, he was given regular appointment as a Senior Resident vide the aforementioned appointment letter dated 11.05.2010.

2.2 His services were abruptly terminated by respondent no.2, who is also the Disciplinary Authority (DA) for the applicant, vide the impugned Annexure 'A' office order dated 16.06.2011. Aggrieved by the impugned Annexure 'A' termination order, the applicant submitted a representation

dated 27.07.2011 to respondent no.2 and Dr. Anand Aggarawal, Head of the Department (Paed.), Swami Dayanand Hospital, Shahdara. The applicant also approached this Tribunal by filing OA no.2231/2013 against the impugned Annexure 'A' termination order. The said OA was disposed of by this Tribunal by an order dated 09.07.2013, relevant extract of which is reproduced below:

“2. Learned counsel Shri Rajender Khatter, who is standing counsel on the panel of East MCD, accepts notice on behalf of the respondents. The crux of the matter is that the statutory appeal filed by the applicant against his removal from service has not yet been decided by the respondents. Therefore, Shri Rajender Khatter has submitted that the OA is premature and the statutory appeal should be allowed to be decided first.

3. In the absence of decision on the statutory appeal, we would find it difficult to adjudicate the matter on merits, and, therefore, we direct the Appellate Authority to dispose of the statutory appeal with intimation to the applicant within two weeks.”

2.3 Pursuant to the direction of this Tribunal, the Appellate Authority, namely, the Commissioner, East Delhi Municipal Corporation (EDMC), respondent no.1 considered the representation dated 27.07.2011 filed by the applicant and vide impugned order dated 17.04.2014 (Annexure 'D') rejected the same.

2.4 The applicant through the medium of this OA has urged for setting aside the impugned Annexure 'A' termination order dated 16.06.2011 and impugned Annexure 'D' order dated 17.04.2014 passed by respondent no.2 and respondent no.1 respectively.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 19.08.2016. Shri H.K. Gangwani, learned counsel for the applicant and Shri D.K. Devesh with Shri Suprabh Kumar Roshan, learned counsel for the respondents argued the case.

4. The contention of the learned counsel for the applicant was as under:

- (a) No show cause notice or charge-sheet was issued to the applicant before imposing the penalty of termination from service, which is violative of DMC Services (Services and Control) Regulations, 1959.
- (b) The applicant, due to the ill health of his mother, had prayed respondent no.2 for sanction of leave to him vide letters dated 20.05.2011 and 25.05.2011 but the same was not considered. The applicant had 45 days of earned leave and 15 days of medical leave to his credit.
- (c) He was having matrimonial dispute with his wife and a divorce case between him and his wife was pending in the court. He was quite disturbed due to it.

(d) The termination order is punitive in nature and hence in accordance with the principles of natural justice, enquiry ought to have been held by way of issuing show cause notice and charge-sheet to him before passing the punishment order.

5. Shri D.K. Devesh with Suprabh Kumar Roshan, learned counsel for the respondents, on the other hand, submitted that in terms of the conditions of appointment of the applicant contained in the appointment letter dated 11.05.2010, the services of a Senior Resident can be terminated at any time without assigning any reason. The appointment conditions also envisage that the applicant while on duty/emergency duty cannot leave the hospital without permission. It was also submitted that the applicant was quite erratic and irresponsible in attending to his duties. The biometric attendance records indicated that he did not choose to mark his attendance while working in the emergency. Because of his remaining absent from duty without any information on 19.05.2011 when he was deployed to work in casualty, one Dr. AP. Singh was called for duty in his place.

5.1 The learned counsel for the respondents further submitted that the Appellate Authority (AA) during the course of hearing of the appeal, had called the applicant to appear on 04.03.2014 but the applicant failed to do so. Instead, his

father had appeared. Another opportunity was given to the applicant on 19.03.2014 but he failed to appear even on that date. The DA as well as AA were fully justified in passing their orders considering the conduct of the applicant.

6. In reply to the arguments put-forth on behalf of the respondents, the learned counsel for the applicant submitted that the applicant was indeed having personal problems on account of his matrimonial dispute. He specifically drew our attention to Annexure 'H' judgment of the court of Shri Anurag Sain, Additional District Judge-01 (East), Karkardooma Courts, Delhi dated 30.11.2012, whereby the dissolution of applicant's marriage with his wife was allowed. He also drew our attention to Annexure 'G' leave application of the applicant dated 20.05.2011, addressed to respondent no.2.

7. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Our observations are as under:

i) The applicant was indeed having a lot of problem on his family front in view of the pending divorce case. He had applied for leave to attend to his ailing mother but for inexplicable reasons, the same had not been sanctioned to him

despite the fact that he had 45 days of earned leave and 15 days of medical leave to his credit.

ii) Undoubtedly, as per the terms of appointment contained in the appointment letter dated 11.05.2010 (Annexure 'E'), the respondents were within their right to terminate the services of the applicant without any prior notice. But the termination order vide impugned Annexure 'A' letter dated 16.06.2011 is not a termination-simpliciter. It has been done on the ground that he was absent from duty 01.06.2011 without any information/intimation.

iii) Thus, the termination order is stigmatic in nature. The respondent no.2 was under legal obligation to conduct a disciplinary enquiry following the principles of natural justice. Neither any show cause notice nor any charge-sheet was issued to the applicant by respondent no.2. Thus, the principles of natural justice have been completely brushed aside.

8. The Hon'ble Apex Court in the case of **Kamal Nayan Mishra v. State of Madhya Pradesh and others**, [(2010) 2 SCC 169], has held as under:

"The termination of appellant without an inquiry or hearing was illegal and invalid. In the normal course, we would have set aside the termination and directed reinstatement with consequential benefits, reserving liberty to the employer to initiate disciplinary proceedings. But the peculiar facts of this case require us to adopt a

slightly difference approach to do complete justice between the parties.”

9. In view of the above observations and considering the principle laid down by the Hon’ble Apex Court in **Kamal Nayan Mishra** (supra), we are of the view that the termination order dated 16.06.2011 (Annexure ‘A’) and thereafter the appellate order dated 17.04.2014 (Annexure ‘D’) are punitive and have been passed in violation of the principles of natural justice and thus are liable to be quashed and set aside. Accordingly, the impugned Annexure ‘A’ order dated 16.06.2011 passed by the DA (respondent no.2) and Annexure ‘D’ order dated 17.04.2014 passed by the AA (respondent no.1) are quashed and set aside. Consequently, applicant shall be entitled to consequential benefits. The respondent no.2 is, however, at liberty to initiate action against the applicant in accordance with law by following the principles of natural justice. Since the applicant’s engagement is temporary in nature, this judgment shall not be an embargo to dispense with services of applicant on expiry of tenure.

10. With the above direction, the OA is disposed of.

11. No order as to costs.

(K.N. Shrivastava)
Member (A)

‘San.’

(Justice Permod Kohli)
Chairman