

**Central Administrative Tribunal
Principal Bench**

OA No.100/4280/2013

New Delhi this the 24th day of August, 2016

**Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

Ramesh Kumar,
Sr. Assistant (Retd.) NDMC,
S/o Lt. Sh. Ram Kanwar Gupta,
R/o E-18/105, Sector-3,
Rohini,
Delhi-110085.

...applicant

(By Advocate : Shri Yashpal Rangi)

Versus

New Delhi Municipal Council,
Through its:-

1. Chairman,
New Delhi Municipal Council,
Palika Kendra,
New Delhi.
2. The Director (Vigilance),
New Delhi Municipal Council,
Palika Kendra,
New Delhi.

...respondents

(By Advocate : Shri Rajnish Vats)

ORDER (ORAL)

Hon'ble Mr. V.N. Gaur, Member (A) :-

The applicant, a retired Sr. Assistant of the office of the respondents, has filed this OA with the following prayers :-

“i) quash and set aside the impugned memo's/order(s) mentioned in para I of the O.A.; and

- ii) direct the respondents to restore the pension of the applicant with all consequential benefits including arrears and interest; and
- iii) direct the respondents to grant interest on delayed payment of gratuity w.e.f. 6/7/2012 i.e. date of confirmation of punishment till realization; and
- iv) allow the OA with exemplary cost; and
- v) pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Briefly stated, the applicant was working as Licensing Clerk in the year 2003, when allegedly in defiance of the orders of respondent No.1, he recommended renewal of health licences in respect of some vendors. It was alleged that in some cases he pointed out the ban order of Chairman, NDMC on issuing fresh hawking licenses, while in some other cases he did not do so. The statement of article of charges reads thus :-

"STATEMENT OF ARTICLE OF CHARGES AGAINST
SH. RAMESH KUMAR, SENIOR ASSTT. THE THEN
LINCENCING CLERK, HEALTH DEPARTMENT,
NDMC, PALIKA KENDRA, NEW DELHI.

While working as Licencing Clerk in Health Department during year 2003. Sh. Ramesh Kumar has failed to maintain absolute integrity/devotion to his duty in as much as that

Sh. Ramesh Kumar the then Licensing Clerk presently working as Sr. Asstt. In Enforcement Department has over ruled the Chairman's order and has not obeyed the written instructions issued by the then Chairman vide order No.349/PS/Secy/D/98 dated 16/10/98. He has mentioned the ban order dated 16.10.98 in the case of M/s Jagdamba Cooling Plant and M/s Nav Bharat Cooling Plant. He has not mentioned the said order in the following cases and recommended for renewal of health Licences to the MOH and not mentioned the orders of the then

Chairperson dated 16/10/98. On his recommendations, the then MOH had approved the proposal for grant of Health Licence to the following cases;

1. M/s Shankar Cooling Plants.
2. M/s Gagan Cooling Plant.
3. Sh. Radha Charan S/o Sh. Shiv Charan.

The above acts on the part of Sh. Ramesh Kumar the then Licensing Clerk, Health Department besides unbecoming of a council; servant amounts to gross misconduct in the performance of his duties and thus violated the Provision of Rule 39(2) of the NDMC Act 1994.”

3. The applicant submitted his written representation denying all the charges, following which the respondents ordered a departmental enquiry. The Enquiry Officer submitted his report on 21.12.2010, returning his finding as the charges ‘not proved’. The Disciplinary Authority gave his disagreement note dated 26.04.2011, and a copy of the same along with a copy of enquiry report was supplied to the applicant to make his submissions. The applicant, who had, in the meantime retired on 30.11.2010, submitted his reply on 20.05.2011, and was also given personal hearing by Chairman, NDMC on 11.01.2012. The respondents thereafter passed the impugned order on 21.02.2013, imposing a penalty of 5% cut in pension for a period of five years on the applicant.

4. Though the applicant has challenged the impugned order on a number of grounds in para 5 of the OA, the learned counsel for the applicant during the arguments focused on the following grounds:-

(a) It was submitted that the case against the applicant was based on 'no evidence' because he was neither the initiating authority nor the approving authority for granting licenses. He was only the custodian of the papers. The order issued by the Chairman, NDMC dated 16.10.1998 was that "*no fresh Hawking Licence will be granted*". The cases where the applicant has been alleged to have given his recommendations i.e. M/s Shankar Cooling Plant and M/s Gagan Cooling Plant were refrigerated water vendors and not hawkers. The learned counsel referred to the definition of hawkers, as notified by the Department of Health and Family Welfare, vide Notification dated 17.07.2000 which means "*a person who has no fixed place of business and carries the business of selling food from place to place*". Similarly, the case of Shri Radha Charan, S/o Shri Shiv Charan mentioned in the charge-sheet was not a case of issuing fresh license, but it was only a renewal of licence not covered by the ban order.

(b) The applicant had already retired on 30.11.2010, while the disagreement note and all other orders including the impugned order were issued after that date. This was in violation of the Rule 9 of the CCS (Pension) Rules, 1972.

(c) The representation of the applicant submitted after the disagreement note was considered at the level of the Chairman, NDMC while the proviso to Rule 9 (2) (a) CCS (Pension) Rules, 1972 mandates that it should have been considered by the New Delhi Municipal Council after giving the applicant personal hearing. In this connection, the learned counsel referred to appeal cases of S/Shri V.P. Chetal CE(C) and M.P. Gogia, AE (C), in which NDMC had given its decision after hearing the officers in person.

5. The learned counsel for respondents refuted all the arguments raised of the learned counsel for applicant and submitted that it was a clear case of defiance of the unambiguous order of Chairman, NDMC issued in the year 1998. There was a plain ban on issue of new hawking license, which the applicant was aware of because he himself pointed out that order while processing the case of M/s Jagdamba Cooling Plant and M/s Nav Bharat Cooling Plant, but deliberately ignored it out while moving the proposal for grant of health license to M/s Shankar Cooling Plant, M/s Gagan Cooling Plant and Shri Radha Charan, S/o Shri Shiv Charan. The Disciplinary Authority had, therefore, rightly disagreed with the finding of the Enquiry Officer in the face of a clear evidence. He also denied any violation of the Rule 9 of the CCS (Pension) Rules, 1972 as Rule 9(2)(a) mandated that where the disciplinary

proceedings had been instituted prior to the retirement of the Government servant, the same shall continue after retirement also and concluded by the authority in the same manner as if the government servant had continued in service. The only rider was that the such authority shall submit a report, recording its finding to the President, which in the case of NDMC would mean, the New Delhi Municipal Council. It was pointed out that representation of the applicant which was addressed to the Chairman, NDMC and who had been given personal hearing on 11.01.2012, was placed before the New Delhi Municipal Council and the Council after considering all the facts and circumstances of the case had decided to impose the penalty of 5% cut in pension for a period of five years.

6. We have heard the learned counsel for the parties and perused the record. The charge against the applicant is that he pointed out the ban order issued by the Chairman, NDMC on 16.10.1998, while processing the cases of two vendors but did not do so in respect of three other vendors. The Enquiry Officer had found these charges as not proved mainly on the ground that in respect of the two vendors that are M/s Shankar Water Cooling Plant and Gagan Water Cooling Plant, the Licensing Clerk (the applicant) was not the recommending authority and in respect of M/s Radha Charan, S/o Late Shri Shiv Charan, it was not the case of issuing a fresh hawking licence which was covered by the ban order. The

Disciplinary Authority on the other hand, took a view that the applicant was fully aware of the ban on issuing the fresh licence and he had knowingly not mentioned the same while processing the case in respect of the three vendors mentioned in the charge sheet. The question before us, therefore, is that whether the three vendors mentioned in the charge-sheet were covered by the ban order and as to whether the applicant had deliberately not mentioned the ban order of 1998.

7. The order issued by Chairman, NDMC on 16.10.1998 reads as follows :-

“ORDER

Sub: Total Ban on the issue of Hawking Licences.

A very large number of Hawking Licences have already been issued in the NDMC area such as to Meat, Fish, Fruit, Vegetable, Ice, Ice-Cream, Water, Soft Drinks, Milk and other eatable sellers etc. This has created a lot of problems as these people have been squatting at different places instead of hawking in the area. Besides this, they also sell such eatables in rather in-hygienic conditions which is a health hazard.

Chairman has, therefore, ordered that no fresh Hawking Licence will be granted.

The Chairman has also desired that up to date list of category-wise hawking licences so far issued may be prepared and given to him within a week's time. A total list of health licences so far issued other than the hawking licences may also be prepared and given along with the list of hawking licences.

M.O.H. is requested to please ensure that no new hawking licence is issued with immediate effect. He may also prepare the lists as per details above and put up latest by 22nd October, 1998.

8. It can be seen that the order was issued banning fresh hawking licenses and not the renewals. The case of Shri Radha Charan, S/o Shri Shiv Charan, is admittedly a case of renewal of license and, therefore, would obviously be not covered by the ban order dated 16.10.1998. There is no averment by the respondents that it was not a case of renewal of hawking licence.

9. The Notification of Department of Health and Family Welfare dated 17.07.2000 defines hawker “as a *person who has no fixed place of business and carries the business of selling food from place to place.*” The copy of aforesaid Notification annexed to the OA as Annexure-A/9 is only a draft notification. However, the same has not been controverted by the respondents. We, therefore, infer that the meaning of the word ‘hawker’ did not change in the final Notification. In that case, a refrigerated water vendor, as claimed by the applicant, does not come within the definition of hawker because admittedly the refrigerated water trolleys have fixed sites duly approved by the DCP (Traffic), Delhi Police. Thus the aforementioned three vendors were either not a hawker or it was not a case of fresh issue of license.

10. In this background, the Disciplinary Authority cannot hold the applicant guilty of violating the order banning fresh hawking licenses when the licensees themselves were not hawkers. It has

been argued by the learned counsel for respondents that whether the refrigerated water vendors are hawkers or not, they were issued hawking licenses in violation of the order of respondent no. 1. We do not find any force in this argument of the learned counsel because the type of license to be issued to a non-hawker like refrigerated water vendors, is a matter of policy to be decided by the NDMC and the applicant has no role in determining the same. The ban was on issuing licenses to hawkers and it is established that refrigerated water vendors are not hawkers. The applicant has also placed on record as Annexure-A/8, a copy of the noting in the files relating to issue/renewal of the licenses to the vendors mentioned in the charge sheet. The respondents have not questioned these extracts from the file. In the context of processing of the case of Nav Bharat Cooling Plant, wherein, the applicant is alleged to have pointed out the ban order of 1998, it is observed that it was the Sanitary Inspector who asked the Licensing Clerk on 21.05.2003 to place on record the ban order issued by the Chairman so that the matter could be examined in perspective. The information was thereafter placed on record by the applicant on 22.05.2003 and the matter was processed in the hierarchy and it reached the Medical Officer In-charge of Health, whose remarks are quite revealing. The same are reproduced below:-

“Where is ban. You issued 50 Campa Cola trolleys license in 1999. You issue 153 Mother dairy license in 2002. You issued 25 Ice cream Vadi Lal Licence in 2002. Where

is the ban. I fail to understand. Who is the licensing authority in NDMC legally.

I have called the party to submit full papers. We have received papers of L&DO, NDMC Tax Deptt., and CA placed in the file at page 16-18/c.

I feel now all papers are complete. "A" above is for hawking license. Aerated water come in that category. Refrigerator water trolley have fixed sites duly approved by DCP (traffic), Delhi Police. If the party obtain NOC from DCP (traffic), why should then we object. After all "WATER IS LIFE" all poor people can not afford to spent Rs.12-15 to buy an adulterer mineral water which is unsafe and there are no guarantee to good health. PFA deptt. had widely stated/give press release few months back that more than 80-90% water is not fit for human consumption as supplied by various water filling companies. What else is required of me now. You may kindly enlighten with facts & facts to the best knowledge of your.

Sd/- Dr. G.S. Thind (MOH) dated 22.5.03 marked to CMO (L)."

11. It has been brought on record that not only refrigerated water vendors but Campa Cola trolleys license, Mother dairy license and Vadi Lal Ice cream Licence had been issued during the period 1999 to 2002 despite the aforementioned ban order of 1998. There is also no averment by the respondents that after the year 1998, the respondents have not been issuing the hawking licences. It is further noticed that the ban order of 16.10.1998, apparently was not a ban for all times to come. The wording of the aforementioned para would show that it was in the context of the problems being created by excess number of hawkers squatting at different places instead of hawking in the area earmarked for them. So the Chairman had asked for up to date list of category-wise hawking licences issued till that time and to be given to him within a week

and the same was to be put up latest by 22.10.1998. The intention apparently was to take a decision in this regard after getting the data as asked for by the Chairman. There is no averment anywhere whether the Chairman NDMC after considering the data, if that was put up at all, confirmed this order to continue for ever. In any case, as the preceding discussion shows the NDMC continued to issue hundreds of hawking licences even after that.

12. We do not find the argument of the learned counsel for the applicant with regard to the violation of the provision of Rule 9 of CCS (Pension) Rules, 1972, as tenable. The applicant was given opportunity to make representation after the disagreement note and he was also given personal hearing before the entire matter was placed before the Council. It is recorded in the order dated 21.02.2013 that after considering all facts and circumstances of the case and keeping in view that the applicant had already attained the age of superannuation, the Council exercising its authority under Rule 39 of NDMC Act, 1994 and Rule 9 of the CCS (Pension) Rules, 1972, had decided to impose the penalty of cut in pension. We, therefore, do not find any procedural irregularity in the order dated 21.02.2013.

13. Taking overall view of the facts of the case, it is concluded that the vendors mentioned in the charge-sheet to whom the licences

were issued allegedly in violation of the ban order, were actually not covered by the ban order dated 16.10.1998. Not only that, it is apparent from the Annexure A/8 of the OA, that the ban order was not being practiced by the respondents any more. It is also found that it was not the applicant who selectively mentioned the ban order of 16.10.1998 in some cases and did not do so in others, in the two cases mentioned in the charge-sheet, the reference to the ban order was actually brought in by the Sanitary Inspector. In any case, the reference to the ban order in the context of the three vendors who were issued licences namely, M/s Shankar Cooling Plants, M/s Gagan Cooling Plant and Sh. Radha Charan S/o Sh. Shiv Charan, may not have been relevant at all given the finding that these vendors were not covered under the category of hawkers or category of fresh licenses. The disagreement note and subsequent orders of disciplinary authority, therefore, can not be sustained.

14. In the circumstances and for the reasons stated, we quash the disagreement note and the order of the Disciplinary Authority dated 21.02.2013, and order that the pension of the applicant shall be restored as per his entitlement from the date, the 5% cut in pension was implemented, and the applicant shall be refunded the amount that has been cut from his pension. This action shall be completed within a period of three months from the date of receipt of a certified copy of this order. Considering the circumstances of this

case, there will be no order with regard to the payment of interest.

No costs.

(V.N. Gaur)
Member (A)

(Justice M.S. Sullar)
Member (J)

24th August, 2016

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