

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.4456 OF 2014

New Delhi, this the 21st day of November, 2017

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND**

HON'BLE MS. PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBMER

.....

Sh.Praveen Sharma,
Aged 40 years,
Assistant Store Keeper,
S/o Shiv Charan Sharma,
R/o Village Khera Khurd,
Delhi 110082

.....

Applicant

(By Advocate: Shri Yash Pal Rangi)

Vs.

New Delhi Municipal Council, through its :

1. The Chairman,
New Delhi Municipal Corporation,
Palika Kendra, New Delhi.
2. The Secretary,
New Delhi Municipal Corporation,
Palika Kendra, New Delhi.
3. The Director (Personnel),
New Delhi Municipal Corporation,
Palika Kendra, New Delhi

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Respondents

(By Advocates: Ms.Sriparna Chatterjee and Mr.Rajneesh Vats)

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Per RAJ VIR SHARMA, MEMBER(J):

The applicant has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:

- “i) call for the records of the case and peruse the same.
- ii) Quash and set aside the noting/order dated 22.12.2006 and order dated 26.12.2006 passed by the Chairperson,

- NDMC, Respondent no.1 being illegal, arbitrary, discriminatory and unjust.
- iii) Quash and set aside the order dated 10.10.2013 whereby respondents have again rejected the claim of the applicant to be regularized on the post of Assistant Store Keeper (Auto);
 - iv) Quash and set aside the order dated 26.8.2014 to the extent RMR status was granted with immediate effect and not w.e.f. 31.12.1998;
 - v) Direct the Respondents to reinstate the applicant and regularize the services of the applicant as Assistant Store Keeper(Auto) after giving due weightage of his services from 10/7/1997 to 27/12/2001 and after giving him the proper pay scale of the said post w.e.f. the date of the judgment of the Single Judge of Hon'ble High Court i.e. 12.12.2005 and grant him all consequential benefits of seniority, arrears of pay and allowances etc. flowing there from or in the alternative direct the respondents to grant RMR status to applicant w.e.f. 31/12/1998 and regularize his service on the post of Storeman (Auto) after completion of six years after grant of RMR status with all consequential benefits including arrears;
 - vi) Direct the Respondent to pay the costs of this application to the applicant.
 - vii) pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. Resisting the O.A., the respondents have filed a counter reply. The applicant has also filed a rejoinder reply thereto.

3. This is the third round of litigation initiated by the applicant in the matter of regularization of his services. The applicant had earlier filed W.P. (C) No.19 of 2002 before the Hon'ble High Court of Delhi seeking regularization of his services in the post of Assistant Store Keeper (Auto). The learned Single Judge of the Hon'ble High Court, vide order dated 12.12.2005, had disposed of W.P. (C) No. 19 of 2002 with a direction to the respondent-NDMC to consider the applicant's case for regularization. It

was also directed by the learned Single Judge that while considering the applicant's case, the respondent-NDMC should give due weightage to the period of service already put in by him between 1997 and 3.12.2001 and to ensure that an appropriate order relaxing the age requirement in respect of the post was passed. LPA No.2130 of 2006 filed by the respondent-NDMC challenging the judgment passed by the learned Single Judge was dismissed by the Division Bench of the Hon'ble High Court, vide order dated 21.11.2006. Alleging non-compliance with the judgment passed by the learned Single Judge, the applicant had also filed Contempt Case (C) No.770 of 2006. After recording the submission of the respondent-NDMC to consider and take a decision in the applicant's case within a stipulated period, the learned Single Judge, vide order dated 22.11.2006, had disposed of the said Contempt Case. Accordingly, the respondent-NDMC duly considered the applicant's case, but rejected the same, vide order dated 26.12.2006. The applicant had again filed W.P.(C) No.1508 of 2007 before the Hon'ble High Court challenging the respondent-NDMC's order dated 26.12.2006(ibid). The said writ petition, having been transferred by the Hon'ble High Court to the Tribunal, was registered as TA No.No.423 of 2009. The Tribunal had disposed of TA No.423 of 2009, vide order dated 8.9.2009, the operative part of which is reproduced below:

“4. We, however, note that the impugned order does not reflect true compliance in letter and spirit with the directions passed by the Hon'ble High Court. Therefore, we direct the respondents to pass orders afresh on the directions of the Hon'ble High Court in Writ Petition No.19/2002 followed by

CP No.770/2009 within a period of two months from the date of receipt of a certified copy of this order.”

In compliance with the Tribunal's order dated 8.9.2009, the respondent-NDMC considered the applicant's case, but rejected the same, vide order dated 10.10.2013 (Annexure P-1), which is reproduced below in extenso:

“NEW DELHI MUNICIPAL COUNCIL
PALIKA KENDRA: NEW DELHI
ELECTRIC ESTABLISHMENT-II

No.SO(EI-II)/2680/SA-1

dated 10.10.2013

ORDER

In compliance of the order of the Hon'ble Central Administrative Tribunal dated 8/9/2009 in TA No.423/2009 directing the department to pass a Speaking Order, the case of Sh.Praveen Kumar has been re-examined, and the position that emerged after analyzing the facts of the case is elaborated herein below:-

- (i) Sh.Praveen Kumar was appointed as Storeman (Auto), a Group 'D' post, on ad hoc basis w.e.f. 10/7/1997 for a period of six months against leave vacancy created due to long absence of Sh.Chattar Singh, vide order dated 20/08/1997. In the said order, it was specifically mentioned that his appointment is purely on ad hoc basis and will not confer any right for regularization. His term was extended up to 15/04/2001, time to time vide orders dated 10/1/1998, 10/7/1998, 10/7/1999, 9/1/2000 and 16/10/2000.
- (ii) Sh.Praveen Sharma was appointed as Assistant Store Keeper (Auto) on contract basis for a period of six months at contractual salary of Rs.4000/- w.e.f. 28/6/2001 vide order dated 06/07/2001. His term was not further extended after expiry of six months period.
- (iii) An agreement was executed between Sh.Praveen Sharma son of Sh.S.C.Sharma and Chairperson, NDMC on 20/07/2001 in which the applicant agreed to abide by the conditions laid down in the said agreement and condition 3(e) of the said agreement stipulated that the contractual engagement will not confer any right on him for regular appointment.
- (iv) Before expiry of the contractual period, as aforesaid, Sh.Praveen Sharma approached the High Court of Delhi apprehending termination of his service, on expiration of

contractual period. The main contention of the petitioner before the court was for regularization as Assistant Store Keeper on the basis of some appointments made by NDMC on regular basis.

(v) The High Court of Delhi after hearing the rival contentions of both the parties directed NDMC, vide orders dated 12/12/2005 for consideration of the name of the petitioner to the post of Asstt. Storekeeper and also pointed out that while so considering his case the NDMC shall give due weightage to period of service put up by him between 1997 and 03/12/2001.

(vi) On the basis of the admission made by the petitioner before the Chairperson NDMC on 18/12/2006 that he worked as Storeman, a group 'D' post on ad hoc basis for the period 10/07/1997 to 15/04/2001 and as Asstt. Storekeeper a Grade 'C' post for the period 28/06/2001 to 27/12/2001 on contract basis. The Chairperson, vide orders dated 26/12/2006 rejected the claim of Sh.Praveen Kumar Sharma. Moreover, the applicant did not fulfill the criteria laid down under the recruitment rules for appointment to the post of Asstt. Storekeeper.

2. Being dissatisfied, Sh.Praveen Sharma had approached Central Administrative Tribunal, and in view of the orders dated 08/09/2009 passed by the Hon'ble CAT, the case of Sh.Praveen Kumar Sharma has been re-examined afresh as under:

(i) The Council vide resolution No.3 (xxxvi) dated 17/5/2001 resolved that six RMR workers be regularized against Group 'C' post after one time relaxation from Government of Delhi and that there shall not be any further regularization against Group 'C' post.

(ii) The engagement of Shri Sharma was not on muster rolls. He thus cannot claim benefit of one time relaxation given to some RMR workers vide Resolution dated 17/5/2001.

(iii) The Government of NCT of Delhi has set up Delhi Subordinate Services Selection Board (DSSSB) vide Resolution dated 4/10/1996. The main objective of the Board is to make recruitment to various posts of Group-B (Non-Gazetted) and Group 'C' in Government of NCT of Delhi, MCD, NDMC and autonomous bodies under the Government of NCT of Delhi.

(iv) NDMC is adhering to the instructions issued by the Government of NCT of Delhi. All the recruitments of Group B (non-gazetted) and group C are being made

from the candidates, whose names are sponsored by DSSSB.

- (v) The Hon'ble Supreme Court of India in the case of State of Karnataka and others vs. Uma Devi and others in Civil Appeal No. 3595-3612 of 1999 decided on 10/4/2006 held that "There may be cases where irregular appointments of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by the court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Government and their instrumentalities should take steps to regularize as a onetime measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that required to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."
- (vi) As per Recruitment rules, the post of the Asst. Store Keeper is to be filled up from the Departmental candidates by inviting applications from the Junior Clerk (now re-designated as Jr.Asstt.). The Junior Asstt. Are promoted from amongst the Clerical Asstt., the feeder cadre. The Clerical Assistants are appointed from the candidates whose names are sponsored by the DSSSB, who successfully qualify the written test.
- (vii) The name of Sh.Praveen Kumar was neither sponsored by the DSSSB against the post of Clerical Asstt., nor did he ever work against the post of the Junior Asstt. He was given the post of Asstt. Store Keeper for a period of six months only as a time gap arrangement. He does not fulfill the criteria laid down under the Recruitment Rules and thus does not qualify for the post of Asst. Store Keeper.

3. In view of the position elaborated herein above and as per guidelines given by the Hon'ble Supreme Court of India, the case of Sh.Praveen Kumar is devoid of merits. Hence, his claim is rejected.

4. This issues with the approval of the Competent Authority.

Sd/
Director(Personnel)

Sh.Praveen Sharma,
S/o Sh. Shiv Charan Sharma,
R/o Village Khera Khurd,
Delhi 110082.”

While so, the applicant was granted RMR Status on Group 'D' post as ALM with effect from 26.8.2014 by the respondent-NDMC, vide office order dated 26.8.2014, on the following conditions:

- “(i) The grant of RMR Status will not confer his right for regularization.
- (ii) The concerned department must provide basic training to him.
- (iii) The wages will be released by the department to his bank account directly. Accordingly, Director (Transport) is requested to direct the concerned Officer to collect his data of saving bank account so that his wages be sent to his Saving Bank Account directly.
- (iv) The department must ensure that the worker is fully utilized and work in disciplined manner. If there is any laxity or indiscipline or unauthorized absence, this will constitute sufficient reason for termination/removal.
- (v) Seniority shall be drawn on the basis of his actual days of working as TMR.
- (vi) The antecedents of the above candidate is to be verified by the user department.
- (vii) His posting shall be decided by the Director (Transport) separately.
- (viii) The Department may also ensure that the services of the above RMR worker is fully utilized as usual and further engagement of the casual labourers are avoided.”

After the above order dated 26.8.2014 was issued by the respondent-NDMC, the applicant filed the present O.A. on 11.12.2014 claiming the reliefs as aforesaid.

4. In the above context, it has mainly been contended by the applicant that the respondent-NDMC has arbitrarily rejected his claim for regularization on the post of Assistant Store Keeper. When the Chairman, NDMC, in its order dated 13.9.2002, had categorically mentioned that there was hardly any difference between TMR and engagement on contract basis or on daily wage, his service for 4 ½ years on ad hoc basis/contract basis for the purpose of regularization ought not to have been ignored by the respondent-NDMC. Once his service on ad hoc basis/contract basis have been taken into account by the respondent-NDMC for the purpose of granting him RMR status on a Group D post, the respondent-NDMC ought to have regularized his services on the post of Assistant Store Keeper also by taking into account his ad hoc/contract service for 4 ½ years. Thus, while regularizing the services of other similarly placed persons, the respondent-NDMC ought to have regularized his service on the post of Assistant Store Keeper.

5. In **State of Karnataka v. Umadevi**, (2006) 4 SCC 1, the Constitution Bench of the Hon'ble Supreme Court has held that appointments made without following the due process or the rules relating to appointment do not confer any right on the appointees and Courts cannot direct their absorption, regularization or re-engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution of India should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the

recruitment had been done in a regular manner, in terms of the constitutional scheme, and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates. It has also been held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution of India.

6. In **State of Karnataka and others v. M.L.Kesari and others**, (2010) 9 SCC 247, the Division Bench of the Hon'ble Supreme Court has held that the object behind the direction in para 53 of **Umadevi's** case (supra) is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of Courts or Tribunals, before the date of decision in **Umadevi's case** (supra) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in

Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in **Umadevi** or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in **Umadevi** as a one-time measure.

7. After having given our thoughtful consideration to the facts and circumstances of the case in the light of the decisions of the Hon'ble Supreme Court in **State of Karnataka v. Umadevi** (supra) and in **State of Karnataka and others v. M.L.Kesari and others** (supra), we find no substance in the contentions of the applicant. The impugned orders issued by the respondent-NDMC do not suffer from any perversity, or infirmity, or illegality. Therefore, there is no scope for interference.

8. Resultantly, the O.A., being devoid of merit, is dismissed. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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