

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.3868/2015

Reserved on: 08.11.2017
Pronounced on: 09.11.2017

Hon'ble Mrs. Jasmine Ahamed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Girwar Singh, aged 49 years
s/o late Sh. Ram Singh,
working as Bearer (Group 'D')
in Maulana Azad Medical College,
Govt. of NCT of Delhi, New Delhi
R/o 1/4600, Ram Nagar Extension,
Mandoli Road, Shahdara, Delhi – 32. ...Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

Govt. of NCT of Delhi through

1. The Chief Secretary,
New Sectt., New Delhi.
2. The Director,
Directorate of Education,
Govt. of NCT of Delhi,
Old Sectt., Delhi.
3. The Assistant Director of Education (E-IV),
Directorate of Education,
Govt. of NCT of Delhi,
Old Sectt., Delhi.
4. The Director,
Maulana Azad Medical College,
Govt. of NCT of Delhi,
2, Bahadur Shah Zafar Marg,
New Delhi – 110 002. ...Respondents

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

O R D E R

By Hon'ble Mr. Uday Kumar Varma, Member (A):

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

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 1.7.15 (Annex.A/1) and dated 4.7.15 (Annex.A/2) declaring to the effect that the same is illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to restore the promotion of the applicant to the post of Lab. Assistant with all the consequential benefits including the arrears of difference of pay and allowances.

(ii) Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.”

2. Brief facts, as narrated by the applicant in the OA, are that he was initially appointed to the post of Bearer in Maulana Azad Medical College [respondent no.4] w.e.f. 13.10.1993. As he was fulfilling the eligibility criteria meant for the post of Lab Assistant in Govt. of NCT of Delhi, he was promoted to the said post w.e.f. 19.02.2013 and accordingly was relieved vide order dated 25.02.2013 by respondent no.4 to join the promoted post. The applicant joined the post of Lab Assistant in Directorate of Education on 26.02.2013. It is the contention of the applicant that initially he was facing some problem in discharging his duties as Lab Assistant and, therefore, submitted a representation dated 07.05.2013 for his reversion to the post of Bearer and repatriation to his parent office i.e. respondent no.4. When his request for reversion to the post of Bearer was not considered, he started going through the relevant material/books so that he may able to smoothly discharge his duties of the promoted post of Lab

Assistant and having acquired requisite experience in the field continued to work on the said post till the impugned order was passed. It is to the dismay of the applicant that the respondents, vide order dated 01.07.2015 i.e. after more than 2 years, passed the impugned order reverting the applicant to the post of Bearer and repatriating him to his parent department, which was received by him on 03.07.2015. The applicant immediately on the very same day submitted a representation to the respondents requesting for cancellation of reversion order dated 01.07.2015 as also for withdrawing his request for reversion on the ground of having acquired the requisite experience as also that his representation has not been decided for a long period of more than two years. It is also submitted that even without disposing of his representation, the applicant was relieved vide order dated 04.07.2015 from the post of Lab Assistant with a direction to join his parent department. On these compelling circumstances and to avoid any unauthorized absence from duty, the applicant had to join his parent department as Bearer. He made further representation dated 06.07.2015 followed by a reminder dated 17.07.2015 requesting the respondents to withdraw the reversion and relieving orders and allow him to join as Lab Assistant in the office of

respondent nos. 1 to 3, but till date his above representations have not been decided.

3. Per contra, the respondents no.1 to 3, in their counter affidavit, have submitted that since the applicant had himself requested for reversion to his substantive post of Bearer on account of finding difficulties in discharging his duties as Lab Assistant, now he cannot say that his reversion order be restored. To accede to his request, the respondents took up the matter with MAMC vide letter dated 05.02.2015 to have their NOC as to whether they were willing to take the applicant back. On receiving willingness from MAMC vide letter dated 28.04.2015, the applicant was reverted to the post of Bearer with a direction to join his parent department vide order dated 01.07.2015. They have also submitted that the applicant did not withdraw his request letter for reversion before passing of the impugned order of reversion. All his alleged representations were made after passing of the reversion and repatriation order. Therefore, there is no infirmity in passing the impugned reversion order, which was passed on his request. Moreover, the applicant has already joined his parent department i.e. respondent no.4 on the reverted post. The respondents, therefore, vehemently opposed the

prayer of the applicant and submitted that the OA, being devoid of merit, deserves to be dismissed.

4. We have thoroughly gone through the pleadings of the case and carefully heard the oral submissions made by the learned counsel for both the parties at the time of arguments.

5. The respondents, while opposing the arguments of the applicant, came forth with the plea that the respondents had dutifully taken up the matter of applicant's reversion with MACM for getting the NOC and after getting the same from MACM, they passed the order accepting the request of the applicant to revert him to his previous post of Bearer. What, however, has not been mentioned is that while the representation was made on 26.02.2013 followed by representation dated 07.05.2013 and by yet another representation dated 05.09.2013, the respondents wrote a letter to MACM on 05.02.2015 i.e. a good two years after the applicant had made his first representation. The respondents also argued that the applicant accepted the order without any protest and joined the MACM on repatriation and, therefore, having accepted his reversion, it does not lie in his mouth to oppose the same now.

6. The facts are that although order of reversion was passed on 01.05.2015, the applicant had soon thereafter made a representation on 03.07.2015 followed by one dated 06.07.2015 and yet another representation dated 17.07.2015 while he was relieved on 04.07.2015. It is, therefore, apparent that the plea of the respondents that the applicant had accepted the revision order without any protest or without taking any remedial action does not seem to be correct in light of the record. Here, it is a clear case where the applicant indeed, to begin with, wanted to get reverted and, therefore, made a representation soon after his promotion. But the fact also remains that the respondents took almost two years to decide his representation and at no point of time they intimated him that his representation was under consideration and he may await a decision on the same. The assumption for a normal person in such circumstances would be that his representation is not likely to be accepted by the respondents. Therefore, it is neither unlikely nor unnatural for the applicant to feel that he is now likely to continue in his promoted post of Lab Assistant. To revert him after a lapse of more than two years on the plea that his reversion is based on his own request does not seem to be justified in the light of circumstances of the case. It is also correct

that the applicant had again tried to persuade the respondents to re-consider their decision to revert him as soon as such a decision had been communicated to him on 01.07.2015.

7. We cannot fail but to note from the record that during the time of his working as Lab Assistant between 26.02.2013 and 04.07.2015, at no point of time the respondents have ever found any deficiency in his working and, therefore, the fact that he is capable of handling the working of Lab Assistant notwithstanding his initial difficulties is adequately and convincingly established. This appears to be logical also because after spending more than two years in the job, the applicant himself admits that he has acquired the necessary skills to handle the job of Lab Assistant confidently.

8. In view of the above discussion, we are convinced that it will be unfair and unjust to allow the reversion of the applicant to his previous post of Bearer. We, therefore, allow the instant OA and direct the respondents to take the applicant back to the post of Lab Assistant. However, on joining the post of Lab Assistant, the applicant will not get the back wages for the period he had not worked on the said post, but he will be entitled to all notional financial

and service benefits that may have accrued to him during the period he was reverted to the post of Bearer.

9. The exercise, as directed above, be completed within a period of one month from the date of receipt of certified copy of this order. There shall be no order as to costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

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