

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.4009/2015

New Delhi this the 7th day of April, 2016.

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

Sh. Jalaj Shrivastava,
Presently posted as
Additional Secretary,
Ministry of Agriculture & Cooperation,
S/o late Shri J.P. Shrivastava,
Aged about 54 years,
R/o C-2/163, Satya Marg,
Chanakyapuri,
New Delhi-110021.

-Applicant

(By Advocate Shri A.K. Behera)

-Versus-

1. Union of India through
Its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110001.
2. New Delhi Municipal Council,
Through its Chairman,
Palika Kendra,
New Delhi-110001.

-Respondents

(By Advocate Shri Rajeev Kumar)

O R D E R (ORAL)

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

This O.A. has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for in the OA read as under:

“8.1 Quash and set aside memorandum dated 25.6.2015 (Annexure A-1) with a direction to the respondents to withdraw the proceedings and grant all consequential benefits to the applicant; and

8.2 Any other relief which this Hon’ble Tribunal may deem fit and appropriate, in the circumstances of the case.”

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

2.1 The applicant belongs to Indian Administrative Service (IAS) of 1984 batch borne on AGMU cadre. He was posted as Chairman, New Delhi Municipal Council (NDMC) on 27.7.2013 on deputation basis and remained in that post till 30.04.2015. He is presently posted as Additional Secretary in the Ministry of Agriculture and Cooperation.

2.2 One Shri Anil Kumar Saha joined the post of Chief Security Officer (CSO) in NDMC on deputation basis w.e.f. 13.09.2008 for a tenure of five years which ended on 12.09.2013. The Annexure A-2 OM No.2/6/2009-Estt.(Pay-II) dated 25.02.2009 issued by Department of Personnel and Training (DoP&T) governs deputation of Central Government employees to ex-cadre posts under Central/State

Governments and on foreign service to Central/State PSUs/Autonomous Bodies. The said OM prescribes the procedure for extension of deputation tenure of a deputationist. The relevant extract of the *ibid* OM is reproduced below:

“8.3 The borrowing Ministries/Departments/ Organisations may extend the period of deputation upto the fifth year where absolutely necessary in public interest, subject to the following conditions:

- (i) where such extension is granted, it will be subject to the condition that no deputation (duty) allowance will be allowed beyond the fourth year, if the official concerned has opted to draw deputation (duty) allowance.
- (ii) the extension would be subjected to the prior approval of the lending organisation, the consent of the official concerned and wherever necessary, the approval of the UPSC/State Public Service Commission and Appointment Committee of Cabinet (ACC).
- (iii) if the borrowing organisation wishes to retain an officer beyond the prescribed tenure, it shall initiate action for seeking concurrence of lending organization, individual concerned etc. six months before the date of expiry of tenure. In no case it should retain an official beyond the sanctioned term unless approval of the competent authority to grant further extension has been obtained.”

2.3 Shri Anil Kumar Saha, CSO was not relieved on the completion of his five years' deputation tenure on 12.09.2013 and he was allowed to continue in NDMC. The Cadre Controlling Authority (CCA) of the applicant, i.e., Ministry of Home Affairs (MHA) felt that the applicant, being the immediate supervisory officer of Shri Anil Kumar Saha, ought

to have relieved Shri Saha on the completion of his deputation tenure in terms of the Annexure A-2 DoP&T OM. Since he failed to do so, the MHA decided to start disciplinary enquiry (DE) against the applicant for his alleged failure in adhering to the DoP&T guidelines and accordingly issued the impugned Annexure A-1 memorandum of charges to the applicant, which reads as under:-

“Statement of Imputation of misconduct or misbehaviour in support of Article of Charge framed against Shri Jalaj Srivastava (IAS:AGMU:84), the then Chairman, NDMC.

That Shri Anil Kumar, Saha, Joint Area Organiser, SSB, had joined New Delhi Municipal Council (NDMC) on deputation as Chief Security Officer (CSO) on 13.09.2008. The term of deputation of Sh. Saha expired on 12.09.2013.

2. That the DoP&T's O.M. No.6/8/2009-Estt(Pay-II) dated 01.03.2011 clearly stipulates that the deputationist officer is deemed to have been relieved on the date of expiry of the deputation period unless the competent authority has with the requisite approval extended the period of deputation, in writing, prior to the date of its expiry.

3. That in terms of the DoP&T's O.M. No.Ab-14017/30/2006-Estt(RR) dated 29.11.2006, being immediate supervisor officer, it was the responsibility of Shri Jalaj Srivastava (IAS:AGMU:84), the then Chairman, NDMC to ensure that Shri Saha should have been relieved without any overstay.

4. That Shri Anil Kumar Saha was made to continue on deputation after the expiry of his deputation term till 31.10.2014 without the approval of the competent authority.

5. That as per the DoP&T's O.M. No.06/8/2009-Estt.(Pay-II) dated 17.06.2010, S Shri Jalaj Srivastava (IAS:AGMU:84), the then Chairman, NDMC should have

moved the proposal six months prior to the expiry of term of deputation of Shri Saha.

6. That the NDMC vide its letter dated 13.11.2013 sent the proposal of extension of period of deputation of Sh. Saha for a period of six months or till the selection of a new incumbent without details on prescribed proforma.

7. That no information on prescribed proforma was provided by NDMC despite Ministry's request dated 28.11.2013 followed by reminders dated 17.12.2013 and 23.12.2013.

8. That the instructions issued by the Ministry vide letter dated 30.1.2014 followed by reminder dated 01.04.2014 to follow strictly the guidelines issued by DoP&T in this regard were not adhered to by NDMC.

9. That on receiving complaints about Shri Saha's continuation in office, delay and irregularity in appointing his successor, a report was sought from the Chairman, NDMC. No response was received till the successor to Shri Saha was appointed.

10. That from the above, it is absolutely clear that Shri Jalaj Srivastava (IAS:AGMU:84) had disobeyed the prevailing guidelines issued by the DoP&T despite instructions from the Ministry to follow the same and had allowed Shri Anil Kumar Saha to overstay on deputation without paying any heed to the instructions of DoP&T and the Ministry. Shri Anil Kumar Saha was made to continue on deputation after the expiry of his deputation term till 30.10.2014 without the approval of the competent authority. Further, he failed to respond to the complaint regarding appointment of the successor of Shri Saha.

11. Thus Shri Jalaj Srivastava (IAS:AGMU:84), the then Chairman NDMC, failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant thereby contravening the provisions of the All India Services (Conduct) Rules, 1968.”

2.4 Aggrieved by the action of the CCA, i.e., MHA (respondent no.1) the applicant has filed the instant OA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant filed his rejoinder thereafter. After the pleadings were complete, the case was taken up for hearing of arguments on 07.04.2016. Shri A.K. Behera, learned counsel for the applicant and Shri Rajeev Kumar, learned counsel for the respondents argued the case.

4. The learned counsel for the applicant, besides reiterating the points raised in the OA, submitted that the applicant was not the immediate supervisory officer of Shri Anil Kumar Saha as has been wrongly alleged in the charge-memo. It was also submitted that Shri Saha had joined in the NDMC as CSO much earlier to the applicant being posted as Chairman, NDMC on 12.09.2013. The learned counsel vehemently argued that the applicant was not at all the immediate supervisory officer of the CSO (Shri Anil Kumar Saha); as a matter of fact there are two more officers in between, viz. Director (Personnel) and Secretary, NDMC. He said that the CSO reports to Director (Personnel), who in turn reports to Secretary, NDMC and the Secretary, NDMC reports to Chairman, NDMC. The learned counsel drew our attention to the judgment of the Hon'ble Apex Court in the case of **Union of India & Ors. v. Upendra Singh**, [(1994) 3 SCC 357], wherein it has been held as under:

“In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law.”

The learned counsel emphasized that the impugned memorandum of charges has been issued to the applicant on the ground that he had failed in discharge of his supervisory duty by not relieving Shri Anil Kumar Saha, CSO on the completion of his five years' deputation tenure. But the fact is that the applicant was not the immediate supervisory officer of Shri Saha and as such, he has not violated the DoP&T guidelines contained in Annexure A-2 OM dated 25.02.2009. Concluding his arguments, the learned counsel stated that since the applicant was not the immediate supervisory officer of Shri Anil Kumar Saha, CSO and hence the charge levied against him in the impugned memorandum of charges is contrary to law and that the applicant has neither committed any misconduct nor any irregularity and thus the prayers made in the OA may be granted.

5. Per contra, learned counsel for the respondents submitted that the applicant being the Chairman of the NDMC ought to have relieved Shri Saha, CSO on the completion of his deputation period being his immediate supervisory officer or if he wanted him to continue in NDMC beyond that period, he ought to have moved a proposal for

the extension of deputation of Shri Saha in terms of Annexure A-2 OM of DoP&T dated 25.02.2009. It was also submitted that despite a letter dated 28.11.2013 from MHA, followed by reminders dated 17.12.2013 and 23.12.2013, the applicant failed to act in the matter. The learned counsel further stated that respondent no.1 vide letter dated 30.01.2014 followed by reminder dated 01.04.2014 instructed the applicant to adhere to the guidelines of the DoP&T but there was complete inaction on the part of the applicant. Under the circumstances, the respondent no.1 was left with no other option except to initiate disciplinary action against the applicant for which the impugned memorandum of charges was issued. The learned counsel also stated that the word 'immediate superior' does not in any manner mean that no action can be taken by any other superior/senior officer in the borrowing department. The learned counsel emphatically argued that the applicant has failed to discharge his duties in terms of Annexure A-2 OM of DoP&T, and that if the applicant had wanted Shri Saha to be continued as CSO in the NDMC, he ought to have moved the matter for the extension of his tenure, six months prior to the expiry of the tenure of Shri Saha. Concluding his arguments, the learned counsel stated that the applicant has failed to adhere to the DoP&T guidelines and has also

ignored the letters and reminders from respondent no.1 regarding illegal continuation of Shri Anil Kumar Saha as CSO in the NDMC on deputation basis, he therefore, has lent himself to disciplinary action and hence the impugned charge-memo issued to him is absolutely in order and the OA deserves to be dismissed.

6. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

7. The controversy involved lies in a very narrow compass. The only issue to be decided is as to whether the applicant has failed in his duties to adhere to the DoP&T guidelines contained in the Annexure A-2 OM dated 25.02.2009?

8. A plain reading of the ibid OM indicates that it is the responsibility of the immediate supervisory officer of a deputationist to relieve the deputationist on completion of his deputation or to move a proposal for extension of the deputation if the services of the deputationist are required to be continued for some more time in the interest of the organization. The proposal for extension of the deputation is to be moved at least six months prior to the expiry of the existing deputation tenure. In the instant case, it is quite clear that the applicant being the Chairman of the NDMC was not the immediate supervisory officer of CSO (Shri Anil

Kumar Saha). In between the applicant and the CSO, there were two more functionaries, viz. Director (Personnel) and Secretary, NDMC. As per the extant system of reporting CSO reports to Director (Personnel), who in turn reports to Secretary, NDMC and the Secretary, NDMC reports to Chairman, NDMC. This position was confirmed by the learned counsel for the respondents in reply to a query from us to him during the course of hearing of the arguments. In view of it, we hold that the applicant was not the immediate supervisory officer of CSO, Shri Anil Kumar Saha and as such the charge of violation of DoP&T guidelines contained in Annexure A-2 OM dated 25.02.2009 against the applicant is not justified. Nevertheless, we cannot lose sight of another aspect argued by the learned counsel for the respondents that respondent no.1 had been writing and sending reminders to the applicant for relieving Shri Saha, as he had completed his deputation tenure. Even though the applicant was not the immediate supervisory officer, but after receiving letters and reminders from respondent no.1, he was obliged to ask the concerned 'immediate supervisory officer, i.e., Director (Personnel)/Secretary, NDMC to act in the matter. However, legally speaking, the applicant has not violated the DoP&T guidelines contained in Annexure A-2 OM dated 25.02.2009. We also take cognizance of the fact that five

years' tenure of Shri Anil Kumar Saha expired on 12.09.2013, whereas the applicant joined as Chairman, NDMC on 27.07.2013. As such, action for continuing him in NDMC ought to have been initiated by the concerned 'immediate supervisory officer' even prior to the applicant joining the NDMC, as Chairman on 27.07.2013.

9. In view of the discussions in the foregoing paragraphs, we are of the view that the impugned Annexure A-1 charge-memo is not sustainable in the eyes of law as applicant has not violated the DoP&T guidelines contained in Annexure A-2 OM dated 25.02.2009. As such, we hold that Annexure A-1 memorandum of charges deserves to be quashed and set aside; and accordingly it is so done. The OA is allowed.

10. No order as to costs.

(K.N. Shrivastava)
Member (A)

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

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