

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.120/2014

Order reserved on :02.08.2018
Order pronounced on:18.09.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)
HON'BLE MR. A.K. BISHNOI, MEMBER (A)**

Sohanpal
S/o Late Shri Richpal
R/o Village & PO-Basi
Tehsil-Khekra
District Bagpat, UP.Applicant

(By Advocate: Shri Vidya Sagar for Shri Sanjeet Kumar)

Versus

1. The Commissioner,
North Delhi Municipal Corporation of Delhi
Civic Centre, Delhi.

2. The Dy. Commissioner,
North Delhi Municipal Corporation of Delhi,
Rohini Zone,
Delhi.Respondents

(By Advocate: Shri Satyendra Kumar)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (A)

The applicant, a Beldar in the respondent-North Delhi Municipal Corporation, filed the OA questioning the Annexure A-1 removal order dated 23.07.2010.

2. Brief facts of the case are that while the applicant was working as Beldar, he was served with Annexure R-1 show cause notice dated 18.06.2010. In the said notice, it was stated as under:-

“MCD had introduced Bio-metric system of attendance for all its employees w.e.f. 1.8.2010 beginning with the Town Hall and Ambedkar Stadium Headquarter Offices.

And whereas all the employees of the MCD except those posted at Municipal Schools were brought under the Bio-metric system of attendance on 30.10.2009.

And whereas an extensive exercise has been undertaken by all the Zonal Dy. Commissioners to physically verify all the employees posted within the jurisdiction of their respective Zones.

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“(And whereas you have filled up the registration form, but have not come forward to get your thumb impression recorded on the Bio-metric system of attendance)

And whereas taking into consideration the totality of circumstances as aforesaid it is clear that you are deliberately avoiding to come forward before the authority to set yourself physically verified and enrolled on the Bio-metric system of attendance.

Therefore, by this notice, you are hereby finally called upon to get yourself registered under the Bio-metric system of attendance within 7 days of issue of this notice failing which your name will be removed from one roll of employees of MCD without any further notice in this regard and consequences will follow.”

3. Thereafter, the respondents vide the impugned Annexure A-1 Order dated 23.07.2010, while stating that the applicant has been running absent from 24.12.2009 of his duty without information/without permission of higher authorities, and after

holding that it is not practicable to hold an enquiry in the manner provided in the DMC Service (Control & Appeal) Regulation, 1959, removed the applicant from service under Article 311(2)(b) of the Constitution of India. Against the said removal order, the applicant preferred an appeal on 07.02.2010 stating that he could not turn up for Bio-Metric Attendance System only because he was sick. When the said appeal was not considered by the respondents, the applicant preferred OA No. 2641/2012 and this Tribunal by order dated 14.08.2012 disposed of the said OA directing the respondents to consider the appeal of the applicant and to pass appropriate orders within the prescribed time. CP No. 39/2013 filed by the applicant, alleging violation of the said order was closed recording the passing of an order dated 12.04.2013 by the respondents and with liberty to challenge the same.

4. The applicant, through the medium of the instant OA, challenged the removal order dated 23.07.2010 as well as the appellate order dated 12.04.2013.

5. Heard Shri Vidya Sagar for Shri Sanjeet Kumar, learned counsel for the applicant, Shri Satyendra Kumar, learned counsel for the respondents and perused the pleadings on record.

6. Article 311 of the Constitution of India reads as under:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under

the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.”

7. An order passed under Article 311(2)(b), just by reciting the language of the same, verbatim, cannot make it valid, unless sufficient/cogent reasons and circumstances satisfying the requirements of the said Article were prevailing at the relevant time. Similarly, every order passed by invoking Article 311(2)(b), cannot become invalid on the ground of violation of principles of natural justice. What is required is the existence of valid reasons and circumstances for dispensing with the inquiry before invoking Article 311(2)(b) (See **Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398; Satyavir Singh & Others Vs. Union of India and Others, AIR 1986 SC 555; Jaswant Singh v. State of Punjab, (1991) 1 SCC 362; Chief Security Officer and Others Vs. Singasan Rabi Das, (1991) 1 SCC 729; Union Territory, Chandigarh and Others Vs. Mohinder Singh, (1997) 3 SCC 68; Ex. Constable Chhote Lal Vs. Union of India (2000) 10 SCC 196; Tarsem Singh Vs. State**

of Punjab and Others (2006) 13 SCC 581; Southern Railway Officers Association & Another. Vs. Union of India and Others, (2009) 9 SCC 24; Reena Rani Vs. State of Haryana, (2012) 10 SCC 215; Risal Singh Vs. State of Haryana & Ors., (2014) 13 SCC 244; and Ved Mitter Gill Vs. Union Territory Administration, Chandigarh & Others, (2015) 8 SCC 86). In this view of the matter, it is necessary to examine the circumstances prevailing in the present case at the time of passing of the orders under Article 311(2)(b) and whether the reasoning given by the respondents is justified.

8. The allegation against the applicant was that he was absenting from duty from 24.12.2009 unauthorisedly, and not marking his attendance under the Bio-Metric System. Under no stretch of imagination, the said fact can be termed as the sufficient reason for not holding a regular departmental enquiry before removing the applicant from service. Even if the applicant failed to participate in the departmental enquiry proceedings, the respondents can hold an ex-parte enquiry against the applicant and pass appropriate orders thereafter. None of the decisions referred above, including those, where the orders passed by invoking Article 311(2)(b) of the Constitution of India, were upheld, support the case of the respondents.

9. In the circumstances and for the aforesaid reasons, the OA is allowed and the impugned orders are set aside with all consequential benefits. The applicant shall report for duty within one week from the date of receipt of a certified copy of this order and the respondents shall proceed against the applicant departmentally, as per rules, and complete the said departmental proceedings within 3 months and the applicant shall cooperate in all respects for early completion of the same. However, the applicant is entitled for 50% back wages from the date of removal to the date of his reporting for duty, in terms of this order. No costs.

(A.K. BISHNOI)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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