

CENTRAL ADMINISTRATIVE TRIBUNAL CHENNAI BENCH

O.A.No.882/2014 & M.A.No.663/2018

Dated Wednesday, the 5th day of December, 2018

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

&

Hon'ble Mr.P.Madhavan, Judicial Member

K.R.Vijayakumar,
S/o.P.Ramasamy,
Working as Upper Division Clerk,
Central Leprosy Teaching & Research Institute,
Ministry of Health & Family Welfare,
Chengalpattu 603 001. **...OA Applicant/MA Respondent-1**

By Advocate Mr.G.Purushothaman

Vs.

1. Union of India, Director,
O/o. Central Leprosy Teaching & Research Institute,
Ministry of Health & Family Welfare,
Chengalpattu 603 001. ... R-1 in C

... R-1 in OA/R-2 in MA

2.Smt.R.Lakshmi,
Now promoted as Assistant Accounts Officer,
Central Leprosy Teaching & Research Institute,
Ministry of Health & Family Welfare,
Chengalpattu 603 001.

3.Smt.G.Smitha,
Now promoted as Accountant,
Central Leprosy Teaching & Research Institute,
Ministry of Health & Family Welfare,
Chengalpattu 603 001.

4. Shri N. Sampath Kumar, Working as Upper Division Clerk, Central Leprosy Teaching & Research Institute, Ministry of Health & Family Welfare, Chengalpattu 603 001. ... R-2, 3 & 4 in

... R-2, 3 & 4 in OA/
Applicants in MA

5.Shri A.F.Shahul Hameed,Working as Upper Division Clerk,
Central Leprosy Teaching & Research Institute,
Ministry of Health & Family Welfare,
Chengalpattu 603 001.

...R-5 in OA/R-3 in MA

By Advocate Mr.S.Nagarajan(R-1 in OA)

Mr.V.P.Rajendran (R-2&4 in OA)

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"To set aside the seniority list of Upper Division Clerk in the office of the Director, Central Leprosy Teaching & Research Institute, Chengalpattu, 603001 circulated vide letter no.F2(18)/E.I./2013 dated 19.11.2013 (Annexure A-1), subsequent order no.F2(18)/E.I./2013 dated 15.04.2013 (Annexure A-2) and the conditions specified in the applicant's absorption no.F2(11)/E.I./98-99/UDC/840 dated 05.01.2012(Annexure A-4) which are all against the provisions under clause 3(5) of the office memorandum No.20011/1/2008/Estt.(D) dated 11.11.2010 (Annexure A-4) of the Director (Establishment) Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel & Training, New Delhi and consequently place the applicant in serial no.1 of the seniority list of Upper Division Clerk as on 01.11.2013 (Annexure A-1) in the office of the respondent herein and to promote the applicant as Assistant Accounts Officer (Adhoc) in the office of the Director, Central Leprosy Teaching and Research Institute, Chengalpattu 603001 and thus render justice."

2. MA has been filed by Respondents No.2 to 4 in the main OA seeking dismissal of the OA on the ground that it is now infructuous in the light of certain developments that have taken place. It is submitted that the applicant was an ex-defence employee who was appointed in CLTRI under the Ministry of Health & Family Welfare. He has raised a seniority dispute, inter alia vis-a-vis the MA applicants in the OA. However, before the OA could be decided, the applicant applied for and was selected for the post of Senior Clerk in the office of the Welfare Commissioner under the Labour Welfare Organization, Tirunelveli, Tamil Nadu. An order absorbing him permanently in the job was issued on 06.06.2018.

3. Following the above, the official respondent in this OA issued an office order dated 03.08.2018 relieving the applicant from his duties w.e.f the same date without lien as per Para 3.4.3 of the DOPT OM No.28020/1/2010-Estt(C) dated 17.08.2016 as he has been absorbed as Senior Clerk in the office of the Welfare Commissioner under the Labour Welfare Organization. It is submitted that in view of the fact that the applicant does not hold any lien with the official respondent herein, the seniority dispute is infructuous and consequently the OA is liable to be dismissed.

4. Learned counsel for the MA respondent/OA applicant would submit that the applicant proposed to challenge the relieving order dated 03.08.2018 in which it is stated that he had been relieved without lien. He would draw attention to Para 3.4.1. of the same OM of the DOPT dated 17.08.2016 in which it is stated that a Government servant's lien on a post may in no circumstances be terminated even with his consent if the result will be to leave him without a lien upon a permanent post. Unless his lien is transferred, a Government servant holding substantively a permanent post retains lien on that post. It is alleged that the applicant had only been appointed on probation and in the event of his failure to complete the probation successfully he would need a fall back position and, therefore, his lien could not be terminated.

5. On perusal, it is seen that the appointment letter of the OA applicant dated 06.06.2018 clearly states that the applicant was absorbed

on the post of Senior Clerk under the Labour Welfare Organization, Tirunelveli with effect from the date of assumption of charge. It is also stated that the applicant would be on probation for a period of two years. However, we are unable to see how this could mean that the applicant would not be entitled to any rights available to a probationer under the Rules. It is clear that he would now hold lien on the new post having been absorbed therein. It is also not denied that the applicant in acceptance of the order has joined the post. As such, we find considerable force in the argument of the learned counsel for the MA applicant that the rights, if any that the applicant had in the previous organization in terms of seniority would no longer be relevant and, therefore, this OA is infructuous.

6. In view of the above, MA is allowed and the OA is dismissed as infructuous. No costs.

(P.MADHAVAN)
MEMBER(J)

(R.RAMANUJAM)
MEMBER (A)

05.12.2018

M.T.