

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3888/2014
MA 3362/2014

Reserved on: 16.04.2019
Pronounced on: 25.04.2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr.S.N.Terdal, Member (J)

Shri Balvinder Singh, Age-39 years,
Designation: Assistant,
S/o Sh. Charanjeet Singh,
r/o WZ-32B, Vishnu Garden,
Punjabi Market, Part-1,
New Delhi-110 018.

... Applicant

(By Advocate: Dr. Ashwani Bharwaj)

VERSUS

1. Union of India,
Through Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
Rafi Ahmed Kidwai Marg,
New Delhi-110 001
2. Union of India,
Through Secretary,
Department of Personnel & Training,
North Block, New Delhi.
3. The Registrar General,
High Court of Delhi,
Sher Shah Suri Marg,
New Delhi.

... Respondents

(By Advocate: Ms. Niharika Dudeja for R-1 and R-2
Ms. Saumya Jain for Ms.Anu Bagai for R-3)

ORDER

(Hon'ble Mr. S.N.Terdal, Member (J)):

We have heard Dr. Ashwani Bhardwaj, counsel for applicant and Ms. Niharika Dudeja for R-1 and R-2 and Ms. Saumya Jain for Ms.Anu Bagai

for R-3, perused the pleadings and all the documents produced by the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- “(a) QUASH the Order dt. 03.07.2012 and Office Memorandum dt. 07.06.2012, by which the Respondent(s).1 and 2 have deemed Assistant to have resigned from the post of UDC in CSCS cadre of Ministry of Water Resources with effect from 21.09.2007 (AN) due to which, the applicant would not be eligible to be considered for promotion in the Assistant Grade of the CSS Cadre, and
- (b) QUASH the Order dt. 08.05.2013, by which the Respondent No.2 had informed Respondent No.1, about rejection of the representation of the applicant, and
- (c) QUASH the Order dt. 29.05.2013, by which the Respondent No.1 had informed Respondent No.3, about rejection of the representation of the applicant, and
- (d) DIRECT the respondents 1 & 2 to extend the lien of the applicant on the post of UDC or any promotion post with the Respondent No.1, till the applicant is appointed on a regular post or the applicant is reverted to his parent cadre, with all consequential benefits of pay, allowances & seniority, and
- (e) GRANT cost in favour of the Applicant and PASS any other or further order(s), in favour of the Applicant, which this Hon’ble Tribunal may deem fit, just & proper in the above-mentioned facts & circumstances.”

3. The relevant facts of the case are that the applicant who was permanently employed as UDC in respondent No.1-Ministry of Water Resources, was selected for the post of Junior Judicial Assistant in the High Court of Delhi. He was relieved of his duties with effect from forenoon of 22.09.2004 with a direction to report to the Deputy Registrar (Estt.) High Court of Delhi, New Delhi. At the time of relieving vide order dated 22.09.2004 it was clearly stated that his lien on the post of Upper Division Clerk (UDC) would be kept for a period of two years w.e.f. 22.09.2004(Forenoon) and that he should report back to the Respondent No.1 Ministry within the aforesaid period of two years or he should resign

from the post of UDC at the end of the period of two years. He did not return after two years. He requested through respondent no. 3, Registrar General of High Court of Delhi for extension of his lien period. The said lien period was extended from time to time. While he was working under respondent no.3 he applied for different post and without informing his parent department he went on working in different post. Subsequently when the case of further promotion of the applicant in the parent department was being considered the respondent no.1 after consulting DOP&T, the nodal Ministry, terminated the lien of the applicant with effect from 21.09.2007 by the impugned order dated 3.07.2012. The counsel for the applicant vehemently and strenuously submitted that the impugned order dated 3.07.2012 is bad in law as no employee shall be rendered without lien as per the proviso to Fundamental Rule (FR) -13 and 14-A.

4. The respondents have filed detailed counter reply giving details action culminating in passing of the impugned order of termination of the lien. They have stated very specifically that in view of the suppression of facts by the applicant and in view of the opinion of the DOP&T, the nodal Ministry, they have passed the order of termination of lien. The relevant paragraphs are extracted below:

"..9. That the Applicant was again selected for the post of Junior Judicial Assistant in the High Court of Delhi and he was relieved by Respondent No.1 on 22.9.2004 to join with Respondent No.3 retaining his lien on the post of UDC for a period of two years, vide Order dated 22.9.2004 therein it was specifically mentioned that he should either back to the parent Department (Respondent No.1) within the period of 2 years or resign from the post of UDC in his parent Department (Respondent No.1) at the end of 2 years. The copy annexed with OA as Annexure A-5 may please be perused.

10. That on the requests of Applicant received from the High Court, the lien of Applicant was extended from time to time and it was extended upto 21.9.2011 by the Respondent No.1, in terms of FR 14-A which states that except as provided in FR 13 and Clause (d) of this Rule, the Government servant's lien on a post may in no circumstances be terminated if the result will be to leave him without lien upon a regular post. However, answering Respondent was never informed in regard of the status of his confirmation to the post of Junior Judicial Assistant and appointment on deputation to the Armed Forces Tribunal as Assistant by the Respondent No.3. The copies of Order annexed with O.A. as Annexure A-7 (colly) may please be perused.
11. That in January, 2011, Department of Personnel & Training (DOPT) issued OM for ad-hoc promotion of UDCs of CSCS of Select List Year 2002 and 2003 to Assistants' Grade of CSS subject to fulfilment of certain terms and conditions.
12. That considering the fact that the applicant was an UDC belonging to Select List Year of 2003 but has not been working in the cadre of the Respondent No.1 since 22.09.2004 and continuing with a lien in the grade of UDC with Respondent No.1, DOPT was requested to advice whether after retaining his lien for 8 years the Applicant can be considered for appointment on ad-hoc basis in the grade of Assistant if he reverts back to the Respondent No.1.
13. That the DoPT clarified that the Ministry had wrongly interpreted FR 14-A and extended his lien erroneously beyond the maximum of 3 years as prescribed under FR 13 & FR 14. The DoPT advised the Ministry to terminate his lien with effect from 21.9.2007, i.e. after allowing maximum retention of lien in his case.
14. That in view of clarification of the DoP&T, which is the nodal Department for interpretation of FR & SR, the extension of lien beyond 3 years by the Respondent No.1 in respect of the Applicant was beyond the mandate of the relevant rules, the necessary corrective step was mandatory on the part of Respondent No.1 and accordingly Applicant's lien to the post of UDC was terminated w.e.f. 21.9.2007 and the Applicant was informed through the Respondent No.3 vide Office Order dated 03 July 2012. The copy of the Order dated 03 July 2012 has been annexed with O.A. as Annexure A-1 (colly) may please be perused.
15. That the Applicant made a representation through Respondent No.3 vide letter No.5964/Estt/E.IV/DHC dated 14.03.2003, which was not acceded to by the DoPT, the cadre Controlling Authority to withdraw/cancel the Office Order dated 03 July 2012 and the Respondent No.3 was conveyed vide letter dated 29 May 2013. The copies of DoPT OM dated 08 My 2013

and letter dated 29 May 2013 are annexed with OA as Annexure A-2 and A-3 may please be perused.

16. That in the meanwhile, the Applicant has been promoted as Senior Judicial Assistant w.e.f. 06.10.2010 in the High Court of Delhi/Respondent No.3 from the post of Ad-hoc Judicial Assistant vide 08.10.2010 and not Junior Judicial Assistant vide Order dated 08.10.2010. Moreover, the Applicant successfully completed the probation period as Senior Judicial Assistant w.e.f. 05.10.2011 vide Order dated 12.01.2011 (seemingly date is erroneously mentioned as 12.01.2011 instead 12.01.2012). The promotion to the post of Senior Judicial Assistant from Ad-hoc Judicial Assistant itself indicates that the Applicant has been a permanent employee of the Respondent No.3. Moreover, the Applicant was also proceeded on deputation to the post of Assistant in the Armed Forces Tribunal, Principal Bench, New Delhi with effect from 1.12.2010. The Respondent No.1 with whom his lien was retained, though erroneously, was neither informed nor consulted before his promotion as well as before proceeding on deputation. Moreover, it is submitted that before granting promotion to the Senior Judicial Assistant, the Applicant would have been confirmed or treated confirmed on the post of Junior Judicial Assistant by the Respondent No.3 but the Respondent No.3 never informed the status of confirmation or otherwise while the applications for retention of lien was forwarded to the Respondent No.1. Moreover, in the event of deputation to the post of Assistant in the Armed Forces Tribunal, Principal Bench, New Delhi with effect from 1.12.2010, the Respondent No.3 would have been maintaining the lien to the post of Senior Judicial Assistant without intimation to answering Respondent. The copy of Order of Promotion as Senior Judicial Assistant dated 08.10.2010 and successfully completion of Probation period Order dated 12.01.2011 are annexed with O.A. as Annexure A-8 and A-9 may please be perused."

Referring to the averments made by the respondents extracted above, the counsel for the respondents vehemently and strenuously submitted that applicant had suppressed the fact that he had subsequently completed probationary period as Senior Judicial Assistant w.e.f. 05.10.2011 having been appointed initially as ad-hoc Judicial Assistant and that he had subsequently got deputation from the post of Senior Judicial Assistant to the post of Assistant in the Armed Forces Tribunal. He further submitted that in view of his continued suppression of facts,

referred to above and in view of the advised of the DOP&T referred to in the extracted portion above, the impugned order is passed and that it does not require to be interfered with.

5. In view of the facts narrated above and in view of the reasoning given by the respondents, we are of the opinion that the impugned order do not require to be interfered with. Accordingly, the OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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