

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.1364 OF 2013

This the 3rd day of January, 2019

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

Dr. Surendra Kumar Yadav
s/o Sh. H.S. Yadav,
Aged about 40 years
R/o 37, Old Roshan Pura Extn. A-Block,
Najafgarh, New Delhi-110043.

....Applicant

(By Advocate : Shri S.N. Sharma)

VERSUS

Union of India through

1. Secretary,
Ministry of Health & Family Welfare,
Shastri Bhawan, New Delhi.
2. The Chairman (NIHFW)
Ministry of Health,
Nirman Bhawan, New Delhi.
3. Director (NIHFW)
National Institute of Health & Family Welfare,
Baba Gang Nath Marg,
Munirka, New Delhi-110067.

.....Respondents

(By Advocate : Shri V.S.R. Krishna)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

Heard learned counsel for the parties.

2. By filing this OA, the applicant is seeking the following reliefs:-

- “(a) quash the impugned orders dated 23.4.2012, 17.2.2010 and 11.5.2011.
- (b) direct the respondents to call back the applicant in parent department and reinstate the applicant on the same post with all other consequential benefits.
- (d) pass any other order or orders as deemed fit and proper in the facts and circumstances of the case may also be passed in favour of the Applicant.
- (e) Allow costs in favour of the applicant.”

3. Brief facts of the case as stated in the OA are that the applicant was appointed on 15.7.1999 in the post of Assistant Research Officer (HG) on a basic pay of Rs.6500 p.m. in the pay scale of Rs.6500-10500 on regular basis. The applicant on 23.10.2007 applied for direct recruitment on the post of Reader in Vikram University, Madhya Pradesh and was selected. The applicant made a request to the parent department vide his application dated 19.12.2007 to relieve him. The applicant was relieved by the respondents on 20.12.2007 with certain terms and conditions and the applicant was permitted to retain lien for a period of two years as per rules in vogue.

3.1 The applicant further contended that he had applied for extension of lien period for one more year vide application dated 17.12.2009 which was sent through proper channel. But the same was not responded to. Thereafter the applicant again requested to the respondent to extend the lien period vide application dated 9.3.2010, which was replied by the

respondents vide OM dated 22.3.2010 that his lien in the Institute stands terminated w.e.f. 20.12.2009 as already communicated to him vide Memorandum dated 17.2.2010. Applicant has submitted his appeal/representation dated 6.4.2010 and reminder dated 25.5.2011. When his aforesaid appeal has not been decided by the respondents, the applicant filed OA 886/2012 before this Tribunal and this Tribunal vide Order dated 16.3.2012 disposed of the same at the admission stage with the direction to the respondents to pass a reasoned and speaking order on the appeal of the applicant.

3.2 Pursuant to aforesaid directions of this Tribunal, the respondents passed the order dated 23.4.2012 rejected the appeal of the applicant preferred by him against the order dated 17.2.2010 and 11.5.2011.

3.3 Being aggrieved by the said orders, the applicant has filed this OA seeking the reliefs as quoted above.

4. In pursuance to notice issued to the respondents, respondent no.3 filed the counter affidavit in which it is stated that the applicant applied for the post of Reader, Environmental Management in Vikram University, Ujjain through proper channel. The applicant got selected to the said post. He was relieved from the respondent/Institute vide order dated 20.12.2007 and was permitted to retain lien for a period of two years as per rules and the applicant was further

directed that he will either revert to the Institute within the above period of lien or resign from the Institute at the end of that period. The applicant has given an undertaking that he will abide by the rules and conditions for maintaining lien as per norms and rules of the Institute.

4.1 It is further stated that an order dated 23.7.2009 was received from Vice Chancellor, Vikram University, Ujjain ordering termination of services of the applicant, from the post of Reader, Environment Manager, in the said University, with effect from 23.7.2009. The applicant was, therefore, no longer in the service of Vikram University, Ujjain after 23.7.2009.

4.2 The applicant vide letter dated 17.12.2009 requested the Director, NIHFW to extend his lien for one more year w.e.f. 20.12.2009. In the said letter, he mentioned that he was not confirmed yet on the post of Reader in Vikram University and there was a dispute in service matter and for this, an appeal was under consideration before the Court of Appellate Authority for relief. The application was forwarded by the Vice Chancellor of the said University to Director, NIHFW to take a deemed fit action in the matter with the observation that applicant was terminated by the Executive Council of Vikram University, Ujjain vide letter dated 23.7.2009. The respondents further stated that even after

termination on 23.7.2009, the applicant did not revert back to the Institute and thereafter, the applicant made an appeal to Chancellor and the Governor of Madhya Pradesh. Thereafter vide order dated 2.1.2010, Vice Chancellor, Vikram University, Ujjain upheld the termination order dated 23.7.2009 passed against the applicant and rejected the dispute raised by him against its validity.

4.3 Thereafter, respondent/NIHFW vide its Memorandum dated 17.2.2010 informed the applicant that matter of extension of lien was considered by the competent authority as per conditions stated in the relieving order dated 20.12.2007 and Govt. of India instructions on the subject and it was decided not to allow further extension and as such his lien stood terminated w.e.f. 20.12.2009 as per para 2.b of the relieving order dated 20.12.2007 which stipulates that he will either revert to the Institute within the above period of lien or resign from the Institute at the end of that period. In response to the aforesaid Memorandum dated 17.2.2010, the applicant again requested Director, NIHFW vide his letter dated 9.3.2010 to extend his lien for two more years w.e.f. 20.12.2009 which was considered by the Institute and vide OM dated 22.3.2010, the applicant was informed that his lien in the said Institute stood terminated w.e.f. 20.12.2009.

4.4 Again the applicant submitted his representation dated 6.4.2010 for extension of lien stating that he wants to gain experience for two more years on lien on the higher post of Reader to enhance his career and betterment which is misleading as he has not been working in the post of Reader since 23.7.2009

4.5 Since the applicant did not report to the Institute for duty before termination of his lien w.e.f. 20.12.2009 and extension of period of lien was not agreed to by the competent authority, the respondent/Institute vide Memorandum dated 11.5.2011 terminated the services of the applicant w.e.f. 20.12.2009 as Assistant Research Officer (HG).

5. During the course of hearing, learned counsel for the applicant submitted that applicant preferred his appeal against the orders dated 17.2.2010 and 11.5.2011 and when the same was not decided by the respondents, the applicant approached this Tribunal by filing OA 886/2012 and this Tribunal disposed of the same vide order dated 16.3.2012 with a direction to decide the appeal of the applicant and in pursuance of the said directions of this Tribunal, the respondent/NIHFW considered the same and rejected by a non-speaking and unreasoned order, as no show cause notice was issued before terminating the lien period as well as

service of the applicant which amount to violation of principles of natural justice.

6. Counsel for the respondents submitted that as per the terms and conditions of relieving order dated 20.12.2007, the applicant was permitted to retain lien for a period of two years as per rules and he was further directed that he will either revert to the Institute within the above period of lien or resign from the Institute at the end of the period. He further submitted that the applicant has also given an undertaking on 17.12.2007 that he shall abide by the rules and conditions for maintaining lien as per norms and rules of the Institute. He further submitted that although the applicant has submitted his request for extension of lien for one more year vide his application dated 17.12.2009 but the fact that his services were stood terminated by the Vikram University vide order dated 23.7.2009, the applicant ought to have reported for duty after 23.7.2009 to the Institute before expiry of retention of lien period i.e. before 20.12.2009 which he has not chosen to do and, therefore, the question of consideration of extension of lien for one more year after 19.12.2009 does not arise as the applicant's services had already been terminated by the Vikram University vide order dated 23.7.2009. Counsel further submitted that representations/appeal of the applicant have been duly considered and replied to by the respondents in accordance

with the rules on the subject and the applicant is not entitled to any relief from this Tribunal.

7. The issue involved in this case is confined to the fact that whether extension of lien beyond the period of two years can be claimed as a matter of right. It is an admitted position that the applicant's services were terminated by the Vikram University vide order dated 23.7.2009 with effect from 23.7.2009. However, he has requested for extension of his lien for one more year w.e.f. 20.12.2009 vide his letter dated 17.12.2009. The said request may be considered only in exceptional cases when the Government servant is not confirmed in the department/office where he has joined within a period of 2 years. In such cases he may be permitted to retain the lien in the parent department/ office for one more year. However, in this case, the services of the applicant were terminated by the Vikram University vide order dated 23.7.2009 before the expiry of permissible retention period of lien for two years and in such an eventuality, there is no provision for extension of lien when the services were terminated by Vikram University as after termination of his services by the Vikram University, the applicant has no option to resign from the post of the NIHFW at the end of that period. The only option left for him was to report back to the parent department after termination order dated 23.7.2009, which he did not choose. Rather he sent a request vide his

letter dated 17.12.2009 for extension of his lien for another one year w.e.f. 20.12.2009 on the ground that he was not confirmed yet on the post of Reader in Vikram University and there was a dispute in service matter and the fact that the appeal preferred by the applicant against his termination order was also rejected by the Vice Chancellor, Vikram University, Ujjain vide order dated 2.1.2010. Thereafter vide Memorandum dated 17.2.2010, the NIHFW informed the applicant that matter of extension of lien was considered by the competent authority and it was decided not to allow further extension and as such his lien stood terminated w.e.f. 20.12.2009. In response to the aforesaid Memorandum, applicant again made a request vide his letter dated 9.3.2010 to extend his lien for two more years w.e.f. 20.12.2009, which request was also considered and the applicant vide OM dated 22.3.2010 informed that his lien in NIHFW stood terminated w.e.f. 20.12.2009 and when the applicant did not report to the Institute for duty on termination of his lien period, the NIHFW vide order dated 11.5.2011 terminated the services of the applicant w.e.f. 20.12.2009 as Assistant Research Officer (HG). The appeal preferred by the applicant against the orders dated 17.2.2010 and 11.5.2011 has also been considered by NIHFW and by reasoned and speaking order, the same was rejected by order dated 23.4.2012. This Court does not find any illegality in the impugned orders.

8. In view of the above facts and circumstances of the case, it is clear that the applicant was relieved from the respondent/Institute vide order dated 20.12.2007 and was permitted to retain lien for a period of two years as per rules and was also directed that he will either revert to the Institute within the above period of lien or resign from the Institute at the end of that period. The applicant himself has stated that his services were terminated by Vikram University vide order dated 23.7.2009, hence, it was open to the applicant to revert to the respondent/Institute as this would have been within a period of two years for which he was permitted as per the rules to retain his lien. He chose not to do so and subsequently sought for extension of lien which was denied by the respondents as per rules. Hence, we do not find any irregularity or deficiency in the impugned orders of the respondents and, therefore, there is no reason to interfere with the impugned orders. Accordingly, the present OA is dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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