

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.2680/2013

Tuesday, this the 21st day of May 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Ashok Kumar Sharma
Son of Late Shri Rama Nand
r/o A-138, 1st Floor
Rama Park, Dwarka Mor
New Delhi – 110 059

(Mr. Gagan Mathur, Advocate)

..Applicant

Versus

1. New Delhi Municipal Council
Through its Secretary
Palika Kendra, New Delhi
2. New Delhi Municipal Council
Through its Chairperson
Palika Kendra, New Delhi
3. The Director (P)
New Delhi Municipal Council
Palika Kendra, New Delhi

..Respondents

(Mrs. Sriparna Chatterjee, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant joined the service of New Delhi Municipal Council (NDMC) as a Lift Operator, in the year 1979 and earned several promotions. In 2008, he became Junior Engineer and attained the age of superannuation on 31.07.2012. The respondents framed a scheme for extension of benefit of Time-

Bound Promotion (TBP), wherein the employees, who completed eleven years of service in any cadre, were allowed higher scale of pay. Under that Scheme, the applicant was granted benefit through an order dated 12.01.1996. Twenty days before his retirement, the respondents issued an order dated 10.07.2012, withdrawing the benefit, that was extended to him on 12.01.1996. The same is challenged in this O.A.

2. The applicant contends that he was not put on notice before the said order was issued by the respondents and there was absolutely no basis for withdrawing the benefit. He contends that the impugned order would have an effect of reducing his emoluments throughout his career, not to speak of retirement benefits.

3. The respondents filed counter affidavit opposing the O.A. It is stated that TBP Scheme was framed by the respondents through an office order dated 26.08.1994, to provide relief to those who did not earn promotions and since the applicant got regular promotion between the stipulated spells, he was not entitled for the higher scale of pay. It is further stated that the scheme was replaced with another, framed on 06.04.1999 and that the applicant cannot be said to have been put to any prejudice on account of the impugned order. As regards the plea of violation of principles of natural justice, reliance is placed upon an order of this Tribunal in **William Parashar &**

others v. NDMC & another (O.A. No.1366/2016) decided on 16.02.2017.

4. We heard Mr. Gagan Mathur, learned counsel for applicant and Mrs. Sriparna Chatterjee, learned counsel for respondents, at some length.

5. The basic facts are borne out by record. The applicant was appointed as Lift Operator in the year 1979, he was promoted as Substation Apprentice on 03.04.1981 and as Shift Incharge Grade II on 03.12.1983. When he was in that post, the respondents framed TBP Scheme through an office order dated 26.08.1994. Paragraph 2 of the same reads:-

“Such employees have completed 11 years of service in the cadre in which they are being allowed remuneration in the higher scale of pay either on the first of April or on the first of October in any calendar year, with reference to which dates, cases of eligible employees for higher scales of pay shall be considered two times in a year.”

6. The applicant was working in the pay scale of ₹1320-2590. Through office order dated 12.01.1996, he was put in the pay scale of ₹1640-3275. Thereafter the applicant earned some promotions, such as Shift Incharge Grade I and Junior Engineer. In case the benefit under office order dated 12.01.1996 was extended to the applicant in contravention of any office order or that he was otherwise not entitled to, the basic requirement under the law was that he be put on notice

before withdrawing the benefit. However, no notice was issued to him and straightway the impugned order was passed.

7. In O.A. No.1366/2016 (supra), reference was made to various judgments of Hon'ble Supreme Court, in support of the proposition that if an employee is not put to any serious prejudice, on account of an order passed by the employer, the mere fact that it was not preceded by any notice, cannot be a ground to set aside the same. In deciding whether or not any prejudice was caused, the Court has to take basic facts, borne out by record, into account. It is not the case of the respondents herein that the impugned order does not result in any financial detriment to the applicant. First, the scale of pay would be re-determined and thereafter the resultant amount would be recovered. It was, in fact, quantified.

8. Another aspect is that the withdrawal of the benefit would have a cascading effect for the entire career. The respondents cannot plead that the applicant would not have any plausible explanation, even if notices were to have been given. In **Olga Tellis & others v. Bombay Municipal Corporation & others**, AIR 1986 SC 180, the Hon'ble Supreme Court held that even if it is a fact that a citizen may not have any plausible explanation, it would not be a ground to deny him, right under the principles of natural justice. We are convinced that the impugned order is violative of principles of natural justice.

9. The O.A. is allowed. Impugned order is set aside. It is left open to the respondents to issue notice to the applicant and pass appropriate orders. If the exercise of issuing notice and deciding the matter finally is not completed within three months from the date of receipt of a copy of this order, the respondents shall release all the benefits due to the applicant, ignoring the impugned order.

There shall be no order as to costs.

(Aradhana Johri) **(Justice L. Narasimha Reddy)**
Member (A) **Chairman**

May 21, 2019
/sunil/