

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

This the 01st day of November, 2019

Present:

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER-J
HON'BLE MS. AJANTA DAYALAN, MEMBER-A.

ORDER ON INTERIM RELIEF
IN
ORIGINAL APPLICATION NO. 330/01116/2019

Dipak KumarApplicant.

V E R S U S

Union of India and others. Respondents

Present for the Applicant : Shri N.P. Singh

Present for the Respondents : Shri L.P. Tiwari
Shri K.P. Singh

ORDER ON INTERIM RELIEF

Delivered by Hon'ble Ms. Ajanta Dayalan, AM

Heard Shri N.P. Singh, learned counsel for the applicant and Shri L.P. Tiwari, learned counsel for the respondent nos. 1 to 6 and Shri K.P. Singh, learned counsel for respondent no. 7 on the prayer for interim relief.

2. Present OA has been filed by the applicant Dipak Kumar seeking quashing of order dated 05.07.2019 (Annexure A-20) rejecting his representation dated 16.05.2019 with reference to offer of appointment issued to him vide letter dated 17.01.2018. The applicant has also sought quashing of consequential subsequent office orders dated 02.09.2019 annexed at Annexure A-21 and A-22. Vide these two orders, National Highways Authority of India (NHAI) has repatriated the applicant and relieved him from the date of issue of order i.e. 02.09.2019. The applicant has also sought directions to the respondents to allow the applicant to join NHAI on the post of Manager (Technical) on direct recruitment basis in pursuance of offer of appointment letter dated 17.01.2018 with all consequential benefits. As interim relief, the applicant has sought staying the effect and operation of the order dated 05.07.2019 and the other two consequential office orders dated 02.09.2019. He has also sought

direction to the respondents to allow him to join NHAI as per his main prayer.

3. In the OA, the applicant has stated that he was initially appointed in U.P. Jal Nigam on direct recruitment on the post of Assistant Engineer (Civil) in 2008. He continued to work in the U.P. Jal Nigam. In the year 2015, NHAI advertised for the post of Manager (Technical) on deputation basis. The applicant applied for this post and joined NHAI in June 2016 after having been relieved from U.P. Jal Nigam with the approval of the competent authority. He was appointed for a period of three years i.e. upto 09.06.2019 as per the terms and conditions of deputation. But the applicant worked there upto 02.09.2019.

4. The applicant has further stated that during his period in NHAI on deputation, advertisement for the post of Manager (Technical) was issued by the NHAI. After obtaining no-objection certificate from the U.P. Jal Nigam, the applicant applied for this post. The applicant was successful and NHAI issued offer of appointment to him vide letter dated 17.01.2018 (Annexure A-7). The terms of appointment inter alia included obtaining of 'No Objection Certificate/acceptance of resignation issued by the present employer for joining the NHAI' as per the condition in para 3(ii)(e) of the offer of appointment.

5. The case of the applicant is that the applicant was unable to obtain no-objection certificate from U.P. Jal Nigam within the time schedule prescribed in the offer of appointment as he was to report at NHAI Headquarter within 45 days of issue of offer of appointment failing which appointment was to be treated as cancelled. The applicant made a representation to U.P. Jal Nigam on 03.02.2018 (Annexure A-9) for accepting his technical resignation. Reminder was also given on 26.05.2018 (Annexure A-10). However, he could not obtain no-objection certificate from the U.P. Jal Nigam in time. As such, he approached NHAI vide letter dated 22.09.2018 (Annexure A-11) to allow him four months more time - i.e. up to 31.01.2019 to obtain no-objection certificate (NOC) from U.P. Jal Nigam and to join in NHAI. Being unable to obtain NOC, he was forced to approach the Hon'ble High Court, Lucknow Bench which vide order dated 26.11.2018 (Annexure A-14) directed that the disciplinary proceeding pending against the applicant should be concluded within two months. It was also ordered that 'the petitioner may approach to the NHAI along with copy of this order requesting therein for extension of period of time for submission of no objection certificate. In case, the petitioner

moves such an application, the same shall be decided expeditiously'. In pursuance of the order of Hon'ble High Court, U.P. Jal Nigam concluded the inquiry against the applicant and imposed penalty of censure vide order dated 22.02.2019 (Annexure A-16). Thereafter the applicant submitted representation dated 26.02.2019 (Annexure A-17) to U.P. Jal Nigam requesting for relieving him. Finally, after much effort, the applicant was relieved from U.P. Jal Nigam on 27.04.2019 (Annexure A-18). Thereafter, the applicant submitted his joining report to the General Manager, NHAI Headquarters on 16.05.2019 (Annexure A-19), but there has been no action from the NHAI and finally the impugned orders rejecting his request have been passed by the NHAI. The applicant's counsel has also relied on the order dated 13.09.2019 passed in the case of Naveen Mishra Vs. UOI & Ors (Annexure A-23), where similar order has been stayed by the Tribunal.

6. In short, the case of the applicant is that having succeeded in the competitive exam held by the NHAI (where the applicant was already working on deputation basis since 2016), he has a legitimate expectation of joining the new post. However, due to delay on the part of U.P. Jal Nigam in issuing NOC, he could not join the said post within time line prescribed. NOC could finally be issued to him from U.P. Jal Nigam only on 27.04.2019 (Annexure A-18) and he was also relieved from U.P. Jal Nigam on the same day. However, when he approached the NHAI for joining, the NHAI refused to grant extension of time for joining. He has, therefore, lost even his earlier employment and is being denied the employment in NHAI as well. The applicant is only 36 years and his entire career is ruined. The applicant has, therefore, pleaded for sympathy and intervention of this Tribunal.

7. On the other hand, learned counsel for the respondents strongly opposed the plea of the applicant. He stated that the offer of appointment dated 17.01.2018 (Annexure A-7) is very specific and clear. Paras 3(ii)(e) and (f) of the offer of appointment state as follow: -

- “3(ii) (e). No Objection Certificate/acceptance of resignation issued by the present employer for joining the NHAI.
- (f). Vigilance Clearance issued by the present employer.

Further, para 4 of this offer of appointment states as follows: -

“4. You are requested to report to the undersigned at NHAI HQ, along with all the above mentioned documents within 45 days from the date of issue of this letter, failing which the offer of appointment will be treated as cancelled.

Thus, offer of appointment was specific and clear. NOC was required prior to joining at NHAI. Besides, successful candidates, alongwith required documents, were to report for duty within 45 days from the date of issue of offer of appointment. It was also made clear in the offer of appointment that the offer will be treated as cancelled in case the candidates fail to report within 45 days.

8. The learned counsel for the respondents further argued that the NOC dated 27.04.2019 (Annexure A-18) itself is not really a clear NOC. The same indicates that penalty of censure has been imposed on the applicant. Besides, recovery of financial loss to the department is to be made from him. Thus, the applicant has not been cleared fully vide this NOC.

9. Further, learned counsel for the respondents stated that no specific order has been passed by the Hon'ble High Court in its order dated 26.11.2018 (Annexure A-14). Only a direction was given to decide the application of the applicant expeditiously in case he moves the same. This application has been made by the applicant and has been decided by the NHAI vide order dated 05.07.2019. Thus, there is no question of non-compliance of the Hon'ble High Court's order. As regards this Tribunal's order in a similar case, the respondents have stated that this is not applicable in the instant case in view of specific facts and circumstances of this case. In any case, the order of the Tribunal was not in rem but was only applicable to the applicant of that case.

10. Learned counsel for the respondents stated that in view of all above, there is no reason to give any relief to the applicant.

11. We find that the submissions made by the respondents' counsel regarding terms and conditions contained in offer of appointment are borne out on facts. The terms and conditions are quite clear. These require NOC from the employer as well as vigilance clearance. Besides, the successful candidates are to report to NHAI 'along with all above mentioned documents within 45 days from the date of issue' of offer of appointment, failing which the offer of appointment was to be treated as cancelled. We also find that the NOC was not issued by the parent department of the applicant as disciplinary proceedings were pending against him. Even

after conclusion of the disciplinary proceedings, the applicant has not been exonerated of charges. He has been awarded penalty of censure alongwith recovery of amount of financial loss caused by him. Thus, NOC issued to the applicant cannot be taken as a clear NOC.

12. We are of the view that once there is a competitive exam, the department is to go by its own terms and conditions contained in the advertisement and in the offer of appointment. There cannot be any obligation and mandatory requirement on the part of the organization to cater to requests of individual aspirants.

13. We also observe that the Hon'ble High Court has not passed any specific direction regarding issue of NOC to the applicant. The Hon'ble High Court has only directed that in case the applicant makes a representation, the same shall be considered expeditiously. The applicant made a representation and the same has been considered and rejected by the respondents vide impugned order dated 05.07.2019.

14. Besides, we note that the applicant has only sought quashing of impugned order dated 05.07.2019. During arguments, learned counsel for the applicant was queried as to what will be the status even presuming that the prayer made by the applicant is granted. There was no satisfactory reply to this query. We note that even if we allow the prayer, the terms and conditions of offer of appointment will still remain valid and the respondents' department can, therefore, not be justifiably forced or directed to allow the applicant to join almost two years after the offer of appointment. Further, granting of this interim relief will be like granting final relief

15. In view of all above, we find no justification for grant of interim relief in the instant case.

16. Let counter affidavit be filed by the respondents within 08 weeks. The applicant may file rejoinder, if any, within 02 weeks thereafter.

17. List on 09.01.2020 .

Member – A
Anand...

Member – J