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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5244/2018 & C.M. No. 20349/2018**

NIRAJ KUMAR SINHA

..... Petitioner

Through: Mr. Pradeep Dewan, Senior Advocate
with Mr. Rajiv B. Samaiyan, Advocate.

versus

MINISTRY OF LABOUR & EMPLOYMENT & ORS...

Respondents

Through: Mr. Jitesh Vikram Srivastava and
Mr. Vinod Tiwari, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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06.08.2018

1. The petitioner has challenged the judgment dated 13.3.2018, passed by the Central Administrative Tribunal, Principal Bench, Delhi whereunder, O.A. No. 716/2018 filed by him, for quashing and setting aside the order dated 06.2.2018 issued by the respondent No.1/Ministry of Labour & Employment, transferring him back to the respondent No.2/National Career Service Centres for Differently Abled at Patna, has been rejected on the ground that the petitioner has failed to point out any order terminating the lien of the respondent No.3/Intervenor, who had gone on deputation to the respondent No.1 and had joined Coaching-cum-Guidance Centre for SC/ST, Delhi but had subsequently, joined back his parent Department, where the petitioner had been accommodated during the period when the respondent No.3 was on deputation.

2. The brief relevant facts of the case are that the petitioner was selected for the post of Lower Division Clerk (in short '**LDC**') and had joined the respondent No.1/Ministry of Finance on 17.6.1994. He resigned from the above post on 01.06.1998 and joined the respondent No. 2/NCSCDA at Patna. He was promoted to the post of Upper Division Clerk, (in short '**UDC**') at Patna with effect from 05.5.2003. It is the version of the petitioner that in the year 2014, he was suffering from several ailments and his health condition deteriorated. Since he desired to get better treatment at Delhi, the petitioner made a request to the respondent No.2 to transfer him from NCSC, Vocational Rehabilitation Centre (VRC) for the Handicapped, Patna Branch to VRC for the Handicapped, Delhi Branch. At that point in time, since there was a vacancy available at VRC, Delhi, the petitioner was duly accommodated and vide office order dated 29.7.2016, he was transferred from VRC, Patna to VRC, Delhi Branch, on a similar post which he joined on 16.8.2016.

3. It has been further averred in the petition that the petitioner was given a joining at Delhi in place of respondent No.3, who while working on the post of UDC at VRC, Delhi, had vide his application dated 14.01.2016, submitted a request for his transfer from VRC, Delhi to CGC for SC/ST, Delhi. The said request was considered by the Competent Authority and vide office order dated 11.3.2016, the respondent No.3 was transferred from VRC, Delhi to CGC for SC/ST, Delhi. However, subsequently, the respondent No. 3 submitted a request for reversion to his parent cadre, which was acceded to and vide office order dated 15.1.2018, issued by the respondent No.2, the respondent No.3 was relieved from CGC for SC/ST to

enable him to join as a UDC at his previous post at NCSC, VRC, Delhi, on which the petitioner had been transferred from Patna, upon the respondent No.3 being transferred to CGC, vide letter dated 11.03.2016.

4. Aggrieved by the aforesaid decision transferring him back to VRC, Patna, the petitioner approached the Tribunal by filing an Original Application. Initially, a status quo order dated 12.2.2018 was passed in favour of the petitioner. Subsequently, when the respondent No.3, who had not been impleaded as a party by the petitioner, filed an application for impleadment, the same was allowed and he was impleaded as a co-respondent in O.M. 716/2018.

5. After examining the stand taken by all the parties, the Tribunal dismissed the Original Application filed by the petitioner with the following observations:-

“9. The only question that needs consideration is that whether the applicant, who came on transfer to NSCS of DA, Delhi from NSCS of DA, Patna on personal request on account of his illness, has any indefeasible right of permanent stay over the post of UDC over which the intervener apparently holds lien.

10. To examine this issue, it is necessary to go through the rule position. The recruitment rules (Annexure R-1 to the Reply) shows that there is one post of UDC for each VRC (now known as NCSC for DA) subject to variation dependent on workload. It is also made clear at the time of arguments that each VRC/NCSC for DA has its own cadre of LDCs, UDCs and Office Superintendents and, therefore, promotions can take place only within one and particular VRC/NCSC for DA. It is, therefore, difficult to conceive from these rules as to how on transfer a post, which is earmarked for that particular NCSC for DA, may be permanently filled, which seems the claim of the applicant herein. The fact of the matter seems to be that since there was a vacancy in NSCS for DA, Delhi on account of deputation of the

*intervener as he was sent on deputation to another organization, the applicant was accommodated 8 in Delhi keeping in mind his medical status. However, it turns out that the applicant is using this order as a ground to seek a permanent stay in Delhi for which he is not entitled to as per rules. His parent organization is NCSC for DA, Patna where he is working as UDC and he is to work in that NCSC only in normal circumstances. **At the time of argument, learned counsel for the applicant asserted that the intervener has lost lien in NCSC for DA, Delhi as per some DOP&T circular. However, we cannot accept this ground because obviously, there was no order terminating the lien of the intervener. It is an admitted fact that the intervener had gone on deputation and had come back even before his deputation period was over and, therefore, he has the first right to be posted as UDC in NCSC for DA, Delhi.***” (emphasis added).

6. Mr. Dewan, learned Senior Advocate appearing for the petitioner submits that while passing the impugned order, the Tribunal erred by not taking into consideration the fact that the approval of transfer of the petitioner from the Patna Branch to the Delhi Branch of the respondent No.2 was not a conditional one and therefore, he could not be reverted back to the Patna Centre, as the Recruitment Rules for the post of UDC do not contemplate any reversion. He further states that the Tribunal had failed to consider the fact that once the respondent No.3 had got himself transferred from NCSC of DA, Delhi to CGC for SC/ST, Delhi, he was not liable to be reverted back. He lastly states that the Tribunal erred in holding that the respondent No.3 had a lien on the subject post whereas there was no question of his retaining a lien, once he had opted for transfer to CGC for SC/ST at Delhi.

7. A specific question has been posed to learned counsel for the petitioner to point out any order passed by the respondent No.2/NCSC for DA, Patna Branch that could demonstrate that the jural relation between him and the said organisation stood terminated on issuance of the office order dated 29.7.2016, transferring him to Delhi at his own request. Learned Senior counsel concedes that no such order was passed by the respondent No.2 at the time of issuing the order dated 29.7.2016. The law on the aforesaid aspect is clear. Mere transfer of an employee to a post outside his cadre on a temporary basis, does not sever his relationship with his parent cadre. On the other hand, he continues to retain his lien in his parent cadre till a specific order terminating the lien is passed.

8. We may usefully refer to the case of Ratilal B. Soni and Ors. v. State of Kerala and Ors. reported as **(1990) (Supp) (SCC) 243**, where the Supreme Court held that an employee on deputation can be reverted to the parent cadre at any time and he does not get any right to be absorbed on the deputation post. The same legal position has been reiterated and followed in the case of Palure Bhaskar Rao and Others V. P. Ramaseshiah and Ors. reportable as **(2017) 5 SCC 783**, wherein the Supreme Court while referring to the cases of V. Jagannadh rao V. State of A.P. reported as **(2001) 10 SCC 401** and B. Thirumal V. Ananda Sivakumar reported as **(2014) 16 SCC 593**, held that transfer by the way of recruitment to a different cadre or Service is distinguishable from transfer in relation to service and held that transfer in relation to service simply means a change of place of employment within an organization and the same does not result in termination of lien in the parent cadre.

9. In view of the aforesaid legal position, besides the reasons furnished in the impugned order, for the aforesaid reasons, we do not find any infirmity in the impugned order. On account of the failure on the part of the petitioner to seek termination of his services with the respondent No.2/NCSC of DA, Patna, he cannot claim that he stood permanently absorbed at the place of his posting in Delhi.

10. Accordingly, the present petition is dismissed as being devoid of merits along with the pending application.

HIMA KOHLI, J

REKHA PALLI, J

AUGUST 06, 2018

ap/rkb/na