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

% *Date of Decision: 16th March, 2023*

+ W.P.(C) 9512/2019 & CM APPL. 39132/2019

SH. KUNWAR PAL SINGH Petitioner
Through: Mr. Sundeeep Srivastava,
Advocate.

versus

GOVT. OF N.C.T. OF DELHI AND ANR. Respondents
Through: Mr. Kunal Sharma, Advocate
for R-2.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking the following relief:-

“a) Issue a writ, rule, order or direction in the nature of mandamus directing the Respondent to pay the legitimate dues to the tune of Rs. 14,82,000/- along with interest @ 18% till realization, towards the salary equivalent with the salary of the re-employed personnel and other allowances along with compensation of Rs.15,00,000/- Towards the legal expenses and the mental and physical agony faced by the petitioner.”

2. The facts for deciding the present writ petition and as emerging from the writ petition are in a narrow compass. Petitioner retired on superannuation on 31.07.2013 after rendering nearly 39 years of service with Delhi Transport Corporation/DTC. By his letter dated 21.11.2013, Petitioner requested Respondent No. 2/Delhi Metro Rail Corporation (‘DMRC’) to consider his candidature for appointment on re-employment basis. Considering his vast experience with DTC in different departments and disciplines, DMRC offered appointment to

the Petitioner on the post of Consultant (Traffic) vide letter dated 30.12.2013 for a period of six months at monthly emoluments of Rs.15,600/- along with other admissible allowances. As per one of the terms of appointment, Petitioner was permitted to take up any other employment/consultancy/advisory work during the assignment with DMRC, with prior permission of the Managing Director, DMRC. Petitioner accepted the offer of appointment and joined DMRC. An Office Order was issued on 06.01.2014 appointing him as Consultant PA w.e.f 01.01.2014, which was corrected by a Corrigendum dated 15.01.2014 posting him correctly as Consultant (Traffic).

3. Petitioner thereafter represented several times that he had been wrongly appointed as a Consultant whereas his application was for appointment on re-employment basis. The documents placed on record do show that there are certain notings of DMRC where his case was put up for consideration on the objections raised by the Petitioner, however, his representation was finally rejected on 12.04.2017 noting that the Screening Committee had recommended his case for induction as Consultant and he had accepted the Offer of Appointment in that capacity as also the subsequent extensions of his tenure as Consultant (Traffic) and therefore, his request for change of status from Consultant to re-employment basis cannot be considered. When the DMRC did not heed to the request of the Petitioner for changing his nature of employment, Petitioner approached this Court by filing the present writ petition and seeking a direction to DMRC to consider his appointment as one on re-employment basis and pay the differential in the pay and allowances.

4. Contention of the learned counsel for the Petitioner is that Petitioner had applied for considering his candidature on re-employment basis and it was not open to DMRC to appoint him as a Consultant. The candidature of the Petitioner was forwarded by Safety

& TI Cell to HR Department of DMRC for appointment as Consultant, however, due to an oversight or a typographical error and inadvertently, the Offer of Appointment was issued as a Consultant, which should have been rectified at the earliest. It is further argued that Petitioner made several requests and representations for changing the nature of his appointment and despite favourable notings, which are available on the file, no action was taken to rectify the inadvertent error made initially.

5. It is contended that Doctrine of Legitimate Expectation imposes a duty on DMRC to act fairly. In *Food Corporation of India v. M/s. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71*, the Supreme Court has held that claim based on principle of legitimate expectation can be sustained and a decision resulting in denial of such expectation can be questioned provided the same is unfair, unreasonable, arbitrary and violative of principles of natural justice. Having applied for appointment on re-employment basis and considering the fact that Petitioner's representations were all through under consideration, Petitioner had a legitimate expectation that he would be appointed on re-employment basis particularly keeping in view his past experience of nearly four decades in different disciplines in DTC. The impugned action of DMRC has adversely impacted the Petitioner in terms of his salary and emoluments inasmuch as Petitioner would be entitled to around Rs.41,000/- p.m. on re-employment basis, whereas as a Consultant he was drawing Rs.15,000/- p.m. which is less than half.

6. Learned counsel appearing on behalf of DMRC, *per contra*, submits that Petitioner was offered the post of Consultant (Traffic) vide letter dated 30.12.2013 on a monthly remuneration of Rs.15,600/- keeping in mind his profile and work experience and the appointment was for six months w.e.f 01.01.2014. In the note dated 19.02.2014, it is clearly recorded that the Screening Committee had recommended

the case of the Petitioner for induction as Consultant only since the post in question was created for a Consultant *albeit* it is not denied that Petitioner had applied for being appointed on re-employment basis. The tenure of the Petitioner was extended from time to time as a Consultant after due deliberation at the time of each extension.

7. It is further submitted that Petitioner had raised the issue of his engagement as Consultant on several occasions but each time he was informed that his nature of appointment cannot be changed as he was selected and appointed as a Consultant. Petitioner has accepted his appointment and the extension of his tenures several times without any protest or demur.

8. The contention of the Petitioner that his case is required to be reviewed on the Doctrine of Legitimate Expectation is without any merit since DMRC had never conveyed to him that the appointment as a Consultant was inadvertent or that there was any intent to review or reconsider the same. Moreover, on 12.04.2017, his representation was categorically rejected stating that the Screening Committee had recommended him for induction as a Consultant and change of the status or nature of employment to 're-employment' cannot be considered. It is also argued that conscious of the fact that Petitioner was being appointed as a Consultant, DMRC had permitted him, as a term of his appointment, to take up any other assignment with prior permission of the Managing Director, DMRC, which is impermissible in case of re-employment.

9. I have heard the learned counsels for the parties and examined their rival contentions.

10. It is factually correct and Petitioner is right on the aspect that when the Petitioner had applied with DMRC, vide his application dated 21.11.2013, it was for consideration of his candidature on re-employment basis and this fact is not disputed by DMRC. However,

noting dated 21.11.2013 clearly reflects that the candidature of the Petitioner was considered keeping in the backdrop his 39 years of experience with DTC in various disciplines and a conscious decision was taken to appoint him as a Consultant (Traffic) in T.I. Cell as 400 new buses were being procured, whose delivery was expected from December, 2013 onwards and the work of the T.I. Cell was likely to increase tremendously. Typed copy of the noting is as under:-

"No DMRC/O&M/TI/139/2013

DT. 21.11.2013

NOTE

Subject: Appointment of Consultant (Traffic) in T.I. Cell

1. Placed below is a request of Shri Kunwar Pal Singh, Ex Dy Manager (Traffic), Delhi Transport Corporation for appointment to the post of Consultant (Traffic) in traffic integration cell. In his application Shri Singh has stated that he has 39 years experience of working in DTC in various disciplines of DTC such as line checking, preventive cheques to increase earnings, counseling of traffic staff, keeping record of buses engaged by 135 Private Schools, matter related to court and accidents, getting vehicles released from court on Superdari, etc.

2. Keeping in view his experience in various disciplines in DTC, it is submitted that the services of Shri Kunwar Pal Singh can be optimally utilized in Traffic Integration Cell in view of procurement of 400 buses, the delivery of which is expected from December 2013 onwards and operation of these buses will start soon after the availability.

3. The services of Shri Singh can also be utilized for the work relating to Motor Vehicle Inspection, Registration of Buses and grant of Permits for existing Feeder buses. He can be utilized as additional hand for handling the court cases, (Crime & Claim) relating to existing and new Feeder Buses.

4. In view of above the appointment of Shri Singh for the post of Consultant (Traffic) in T.I. Cell will be tremendously increased.

Submitted for kind consideration and approval please.

Signature

(G.D.Srivastava)

DGM/TI"

11. After the aforesaid consideration and deliberation by the

Signature Not Verified Competent Authority, an Offer of Appointment was issued to the

Digitally Signed By: SHIVAM W.P.(C) 9512/2019

Signing Date: 05.04.2023 13:01:43

Petitioner on 30.12.2013, offering the post of Consultant (Traffic).

The Offer of Appointment is as follows:-

No. DMRC/PERS/19/Consultants/2013

Dated: 30.12.2013

"To,

Shri Kunwar Pal Singh

H.No. E-618/7C

Sangam Vihar, New Delhi.

Sub: Engagement as **Consultant (Traffic)** on contractual terms and conditions.

DMRC is pleased to offer you the post of **Consultant (Traffic)** on the following terms & conditions.

1. Your headquarters will be **New Delhi**.
2. Your assignment will be for a period of **six months** from the date of joining the post.
3. For the above assignment you will be paid an all inclusive monthly fee of Rs. 15600/-
4. Your appointment is terminable at, any time during the currency of the contract on 15 days notice on either side.
5. You will be entitled to TA/DA and reimbursement of accommodation charges in case you are required to stay Outside your headquarters in connection with the DMRC's business, as per rules of the corporation applicable to an official of equivalent status in DMRC.
6. If you wish to take up any other employment or undertake consultancy or advisory work on your own during the assignment with DMRC, you shall take prior permission of Managing Director/DMRC before applying for or taking up such work.

If the above offer is acceptable to you, you are requested to kindly sign and return's copy of the letter to undersigned.

Yours sincerely

Signature

(Sasanka Sarmah)

Dy. CPO/P.I"

12. The notings on the File, copies of which have been filed by the Petitioner, reflect that the tenure of the Petitioner was extended thereafter from time to time as a Consultant (Traffic), which he accepted and continued to work. In this context, it would be relevant

to refer to one of the Office Orders dated 25.06.2014 wherein the tenure of the Petitioner was extended. The significance of the Office Order is that it reflects that DMRC had considered extension of tenures of various employees who were employed on 're-employment basis' or as 'Consultants' by grouping them in separate categories and name of the Petitioner finds mention at serial No. 5 of Table-B under the heading 'Consultants'. Therefore, from a conjoint reading of the decision of the Screening Committee, Offer of Appointment, Office Orders pertaining to extension of tenures, this Court is unable to agree with the Petitioner that his appointment as a Consultant was an inadvertent/typographical error. Clearly, the decision to appoint him as a Consultant (Traffic) was a conscious decision taken by the Competent Authority looking at his experience, job profile and the requirement of DMRC, keeping in view that 400 buses were to be procured in the near future and the expertise of the Petitioner was required at that stage. Office Order dated 25.06.2014 is extracted hereunder, for ready reference:-

"DELHI METRO RAIL CORPORATION LIMITED

No. DMRC/HR/O&M/2014

Dated : 25.06.2014

OFFICE ORDER No. O&M/HR/645/2014

Sub: Extension of tenure of Re-employed and Consultants in O&M.

The tenure of the following Re-employed/Consultant working in O&M are extended as under:-

A) Re-employed

xxx

xxx

xxx

B) Consultants

S. No.	Emp No.	Name (S/Sh.)	Designation	DOB	Existing tenure upto	Tenure extended upto	Controlling HOD
1.	546	Balbir Singh	Consultant/ Mgr. Security	03.05. 1942	30.06.20 14	31.12.2014 and he would stand relieved on 31/12/14	CSC

2.	1625	M.C. Khosla	Consultant/ Manager	12.09. 1943	30.06.20 14	31.12.2014 and he would stand relieved on 31/12/14	GM/E
3.	2012	Krishan Gopal Bagga	Consultant/ PA	02.10. 1949	30.06.20 14	31.12.2014 or till new recruits join whichever is later	GM/E
4.	2753	Inder Singh	Consultant/ Shunter	10.05. 1948	06.12.20 14	06.12.2015	ED/RS
5.	2767	Kunwa r Pal Singh	Consultant/ IT	03.07. 1953	30.06.20 14	30.06.2015	ED/S&TI
6.	2768	Raj Kumar Nayyar	Consultant/ PA	03.03. 1953	03.07.20 14	03.07.2014	GM/Opn
7.	2706	Manmo han Singh Sodhi	Consultant/ PA	07.05. 1948	16.06.20 14	He would stand relieved on 31.07.2014.	CGM/Civil
8.	2431	Harida s	Fire Inspector	13.01. 48	30.06.14	31.12.2014 and he would stand relieved on 31/12/14.	GM/Elect

However, their present extension will be governed by the terms and conditions as laid down in the Office Order No DMRC/Pers/19/2013 dated 21.01.13.

Sd/-

(S.K. Sinha)

General Manager (HR)”

13. No doubt, there are notings placed on record by the Petitioner which do indicate that as and when he represented for change of the nature of his appointment, matter was placed for consideration before the Competent Authority, however, Petitioner has been unable to point to any material on record in the form of notings or letters which would reflect that at any stage a decision was taken to change the nature of his appointment. In fact, contrary to the stand of the Petitioner, notings

reflect otherwise. Counsel for DMRC is right in pointing out that when the Petitioner made a representation in 2017, the same was rejected on 12.04.2017 on the ground that the Screening Committee had recommended his case for induction as a Consultant and he had accepted the Offer of Appointment in that capacity and therefore, his request for change of status cannot be considered. Note dated 12.04.2017 is extracted hereunder, for ready reference:-

"No. DMRC/Estt./PF/KPS/2767/2017

Dated:12/04/2017

NOTE

Sub: Representation from Shri K.P.Singh, Consultant/TI for induction on Re-employment

Ref: Sr. DGM/Ops-II, requested note, dated 24.03.2017,

The representation of Shri Kunwar Pal Singh Consultant/TI, Emp. NO.2767, dt. 24.03.2017 to appoint him on re-employment basis with retrospective effect at par with other similar placed DTC retired employees instead of as consultant, has been gone into.

In this context, it is reiterated inform that the Screening Committee has recommended his case for induction as Consultant and he had accepted offer of appointment as Consultant/Traffic on 01.01.2014 and inducted in DMRC as Consultant/Traffic w.e.f.01.01.2014 on a monthly fee of Rs.15,600/- His present tenure is upto 30.06.2017 His request for change of status from consultant to re-employment basis cannot be considered. Shri K.P.Singh may be informed of the above

DGM/HR/P

Sr.DGM/O"

14. Petitioner is right that it is a settled law that the rights accruing to an employee under the Doctrine of Legitimate Expectation can be enforced but this is subject to a caveat, as held by the Supreme Court in ***Food Corporation of India (supra)*** that the denial of expectation can be questioned provided the same is found to be unfair, unreasonable or arbitrary. In the present case, the Court does not find the action of DMRC to be unfair or arbitrary or even unreasonable. From the reading of the recommendations of the Screening Committee to the Offer of Appointment and notings pertaining to subsequent

extensions of the tenure of the Petitioner, at every stage, Petitioner was notified that his appointment was as a Consultant (Traffic) and the Doctrine of Legitimate Expectation does not come to the aid of the Petitioner. It is even otherwise a settled law that nature of appointments is the domain of the employer depending on the requirements of the job for which the appointment is made, keeping in background the qualifications/experience/profile of an aspiring candidate. The Minutes on record indicate a conscious decision by the employer to appoint the Petitioner as a Consultant and not on re-employment basis keeping in view his expertise and experience and balancing it with the job requirement of DMRC.

15. There is also merit in the submission of the counsel for DMRC that while offering appointment to the Petitioner, clause (6) was incorporated which permitted the Petitioner to take up any other employment/consultancy/advisory work even during the assignment with DMRC, with the permission of Managing Director, DMRC and this position would not have obtained if the Petitioner was appointed on re-employment basis. Therefore, this Court cannot agree with the Petitioner that the intent of DMRC was to appoint him on re-employment basis.

16. The action of DMRC, in my view, warrants no interference. In this backdrop, the prayer of the Petitioner to grant him the differential in the salary of a Consultant and that of an employee appointed on re-employment basis cannot be granted. For all the aforesaid reasons, the writ petition is dismissed, being devoid of merit along with the pending application.

JYOTI SINGH, J

MARCH 16, 2023/rk/shivam