

Reshetnikov v New York City Tr. Auth.

2024 NY Slip Op 31279(U)

April 11, 2024

Supreme Court, New York County

Docket Number: Index No. 159714/2019

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH **PART** **14**

Justice

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IVAN RESHETNIKOV, KAREN GIURDZHIAN, ISRAEL
ABDURAHMANOV

Petitioners,

- v -

NEW YORK CITY TRANSIT AUTHORITY, CITY OF NEW
YORK DEPARTMENT OF CITYWIDE ADMINISTRATIVE
SERVICES,

Respondents.

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INDEX NO. 159714/2019

MOTION DATE 4/10/2024¹

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20

were read on this motion to/for ARTICLE 78.

The petition to *inter alia* reclassify petitioners from a title status of provisional road car inspector to permanent road car inspector is denied.

Background

Petitioners all insist that they were improperly denied promotions to a permanent civil service title. Petitioner Reshetnikov contends that he was hired by respondent New York City Transit Authority (“NYCTA”) in May 2016 and then received a permanent title of car inspector in November 2016. He explains that in August 2017 he was hired off a list of eligible candidates to be a road car inspector with a provisional status. Reshetnikov claims that he thought he would

¹ Although this proceeding was only reassigned to the undersigned this week, the Court is well aware that this proceeding has been pending for far too long. The Court apologizes, on behalf of the Court system, for the inexplicable delay in the resolution of this proceeding.

complete his probationary period by the end of January 2018 but that he found out he was never promoted to a permanent road car inspector title.

Petitioner Giurdzhian similarly claims that he² was promoted to the title of provisional road car inspector in October 2017 and yet was not promoted to a permanent title despite completing the required paperwork. He claims that he was often told there were issues with his “change of title” forms and notes that the Civil Service Law requires that a provisional appointment cannot continue for longer than nine months.

Petitioner Abdurahmanov offers a strikingly similar account. He insists he has been listed as a provisional road car inspector for over two years without being moved to a permanent title.

Respondent Department of Citywide Administrative Services (“DCAS”) observes that under the Civil Service Law, if it is pursuing a reduction for the provisional workforce the nine-month restriction with provisional appointments is suspended. DCAS explains that petitioner Giurdzhian’s status was changed to a permanent title. However, it observes that it could not locate any requests for the other petitioners with respect to a title change.

NYCTA explains that in order for petitioners to receive an appointment as permanent road car inspector, provisional employees have to complete an Education and Experience Test Paper (“EETP”). This form includes a candidate’s education and work experience so that the relevant agency can evaluate a candidate’s qualifications. NYCTA contends that if it believes the EETP is sufficient, it will then forward it to DCAS for approval.

With respect to these petitioners, NYCTA explains that all of them were directed to appear at its employment center on February 7, 2018. NYCTA contends that while Giurdzhian and Abdurahmanov appeared, Reshetnikov did not appear or ever fill out an EETP. NYCTA

² The Court utilizes the masculine pronoun as that is what was used in the verified petition (*see e.g.*, NYSCEF Doc. No. 1 at 8).

explains that Giurdzhian's EETP was initially rejected and, after he revised his EETP, the request for permanent classification was eventually approved by DCAS in January 2020.

NYCTA observes that it rejected Abdurahmanov's EETP on the ground that his experience was vague with respect to the types of vehicles he had inspected and repaired.

Petitioners did not submit a reply.

Discussion

“It is a long-standing, well-established standard that the judicial review of an administrative determination is limited to whether such determination was arbitrary or capricious or without a rational basis in the administrative record and once it has been determined that an agency's conclusion has a sound basis in reason, the judicial function is at an end. Indeed, the determination of an agency, acting pursuant to its authority and within the orbit of its expertise, is entitled to deference and even if different conclusions could be reached as a result of conflicting evidence, a court may not substitute its judgment for that of the agency when the agency's determination is supported by the record” (*Partnership 92 LP v State Div. of Hous. and Community Renewal*, 46 AD3d 425, 428-29 [1st Dept 2007], *affd* 11 NY3d 859 [2008] [internal quotations and citations omitted]).

The Court denies the petition. With respect to petitioner Abdurahmanov, NYCTA explained that his EETP was simply not sufficient and that it therefore never sent it over to DCAS for review (DCAS insists it never received the paperwork). Petitioners did not submit a reply to address this issue. In fact, petitioners did not verify the petition (it was verified only by counsel for petitioners). This Court is accordingly unable to find that respondents' actions with respect to Abdurahmanov were arbitrary and capricious.

Similarly, NYCTA contends that petitioner Reshetnikov never filled out an EETP and petitioners did not submit a reply to contest this assertion nor did they include any documentation concerning this issue in connection with their petition. That compels the Court to deny the petition with respect to this petitioner.

And, finally, the Court finds that the petition is moot with respect to petitioner Giurdzhian as he did receive a promotion upon filling out a revised EETP.

Accordingly, it is hereby

ADJUDGED that the petition is denied and this proceeding is dismissed without costs or disbursements.

4/11/2024

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE