

Central Administrative Tribunal
Principal Bench : New Delhi

C.P. No. 651/2015
IN
O.A. No. 1493/2011

New Delhi this the 02nd day of September, 2016

**Hon'ble Shri Sudhir Kumar, Member (A)
Hon'ble Shri Raj Vir Sharma, Member (J)**

1. Mr. Lokesh Kumar,
Aged 45 years,
S/o Shri Roop Chand,
R/o H.No. 119, Vill Khampur & PO Alipur
Delhi-110036 ...Applicant

(By Advocate: Shri Anuj Aggarwal)

Versus

Shri Keshav Chandra
Chief Executive Officer,
Delhi Jal Board,
Varunalaya Building, Karol Bagh,
New Delhi-110005.Respondents.

(By Advocate: Ms. Sakshi Popli)

ORDER (ORAL)

Per Sudhir Kumar, Member (A):

Heard the learned counsel for the petitioner and the learned counsel for the respondents. Through order dated 29.02.2012, this Tribunal had passed the following orders :-

8. In view of the above position, we allow this O.A. The respondent DSSSB shall treat the applicant as the first eligible candidate who secured the first position in the merit list and accordingly it shall forward his name to the user department for appointment. Further, we observe that it is only because of the wrong practice being followed by the DSSSB, the applicant has been deprived of his rightful claim for appointment in time. Therefore, the applicant shall not be put to any disadvantage. Consequently, the respondents shall grant him the benefit of seniority in the post of Assistant Chemist from the due date. In this case since, no one else was appointed earlier and

the result was admittedly declared on 01.04.2005, it would be fair and just that the applicant is considered as appointed as Assistant Chemist notionally after a month i.e. from 01.05.2005. The respondents shall also pass appropriate order accordingly. He shall also be paid the consequent arrears of pay and allowances within a period of one month thereafter. There shall be no order as to costs.

2. Thereafter, the respondents carried the matter before the Hon'ble High Court, and the order of this Tribunal was upheld by the Hon'ble High Court by stating as follows :-

"11. As in the instant case, the Delhi Jal Board urgently requires an Assistant Chemist and we have respondent No.1 as a selected candidate but yet the post is not being filled up because the Selection Board is refusing to send the dossier of respondent No.1 to the Delhi Jal Board. We make it clear that the decision to fill up or not fill up the vacancy cannot be the decision of the Selection Board, which is merely a recruiting agency. The employer is not the Selection Board. The office or the department of the Government which sends the requisition to the Selection Board would alone have the right to determine whether or not to fill up the vacancy. In future the Selection Board would forward the names of all candidates who have secured marks above the eligible cut-off mark to the office or the department which has sent the requisition to the Selection Board to conduct the examination. It would then be for the said department to decide whether or not it would like to have candidates in the wait list. This would ensure that it is the employer who would decide whether to fill up the vacancy from the wait listed candidate if the candidates in the select list are found either ineligible or do not respond to the letters offering appointment.

12. We concur with the view taken by the Central Administrative Tribunal that the Delhi Subordinate Services Selection Board shall forward the name of respondent No.1 to the Delhi Jal Board for being appointed as an Assistant Chemist.

13. The writ petition is dismissed."

3. We are of the view that the order of this Tribunal has merged into the final order of the High Court in WP (C) No. 5236/2012 in para 12 dated 07.03.2013 which would ultimately prevail. Learned counsel for the respondent has pointed out that in view of the concurrence expressed by the Hon'ble High Court with the order of this Tribunal, the petitioner/applicant has already been given notional appointment from the date indicated. He has also been given

notional promotions, and fixation of seniority on the basis of that, but he has been paid salary and allowances only from the date of his joining.

4. The Hon'ble High Court had confined its order only to the effect that the DSSSB shall forward the name of petitioner to Delhi Jal Board for being appointed as Assistant Chemist, and had not ordered anything beyond that. It has been submitted by the respondent that the salary etc. has, therefore, been disbursed from the date he actually joined, after the order of the Hon'ble High Court having been passed.

5. We do not find any contumacious act done by the respondent, since it is trite law that order of this Tribunal has merged into the judgment of the Hon'ble High Court, and para 12 of the Hon'ble High Court's judgment would prevail. Therefore, the CP is dismissed, and the notice issued is discharged.

(Raj Vir Sharma)
Member (J)

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(Sudhir Kumar)
Member (A)