

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH  
(CIRCUIT BENCH AT SHIMLA)**

O.A.NO.063/00114/2018

Orders pronounced on: 19.03.2019  
(Orders reserved on: 06.03.2019)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Budhi Chand, aged 45 years

S/o Late Sh. Ram Dass

resident of Village and Post Office Jakhyol,

Tehsil Bhoranj,

District Hamirpur

(Himachal Pradesh), Group D.

Applicant

(Argued by: **MS. MEGHA KAPUR, ADVOCATE**).

Versus

1. Navodaya Vidyalaya Samiti, Ministry of Human Resource Development (Department of School Education and Literacy), Government of India, B-15, Sector 62, Noida (U.P) through its Commissioner.
2. Deputy Commissioner, Navodaya Samiti, Ministry of Human Resource Development (Department of School Education and Literacy), Government of India, Regional Office, Bay No. 26-27, Sector 31-A, Chandigarh.
3. Principal, Jawahar Navodaya Vidyalaya, Kothipura, District Bilaspur (H.P)-174001.

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Respondents

(Argued by : **MR. D.R. SHARMA, ADVOCATE**)

**ORDER**  
**SANJEEV KAUSHIK, MEMBER (J)**

1. The applicant has approached this Tribunal under section 19 of the Administrative Tribunal Act, 1985, seeking issuance of direction to the respondents to reinstate him in service as Electrician-cum-Plumber by withdrawing order dated 2.11.2017 (Annexure A-14) with all the consequential benefits.

2. The facts of the case, which led to filing of the instant Original Application (O.A), are that an advertisement was issued in 2008 inviting applications for the post of Electrician-cum-Plumber (ECP) with essential qualification as 10<sup>th</sup> Class Pass with ITI certificate or equivalent in Trade of Electrician or Wireman/Plumbing from a recognized Institute with at least two years experience in Electrical installation, wiring and plumbing work and desirable experience of two years. The selection consisted of trade test/written examination followed by interview. In all, 51 candidates had applied against the aforesaid advertisement. Trade test was held on 3.4.2008 at Bilaspur in which 34 candidates appeared and out of which only 2 qualified who were called for interview. The applicant was placed at Sr. No.1 (with 10.16 marks) and one Mr. Suresh Kumar (with marks as 7.3), was kept in reserve panel. The applicant was, thus, appointed as ECP vide order dated 24.5.2008.

3. An O.A.No.317-HP-2008 titled Suresh Kumar Vs. UOI etc. was filed in this Tribunal in which present applicant was Respondent No.3. He did not appear despite notice, so he was proceeded ex-parte. The allegation in the O.A. by Suresh Kumar was that experience gained by him was not taken into consideration by the respondents due to which he was placed below the present applicant. Accepting this plea, the Court held that if experience of Suresh Kumar is counted, he would

get at least 5 marks and would steal a march over the present applicant (Budhi Chand). Thus, O.A. was allowed and selection and appointment of present applicant was quashed and set aside and respondents were directed to reconsider the entire issue and if found fit, issue Suresh Kumar, appointment order etc, vide order dated 23.10.2008 (Annexure A-2). The CWP No.1684/2009 titled **PRINCIPAL, JNV VS. SURESH KUMAR ETC.** was also dismissed by Hon'ble High Court on 7.10.2015, on the ground that employer has no right to challenge the impugned order, vide which selection and appointment of present applicant was quashed and set aside as only appointee was aggrieved person and not employer.

3. In compliance with order of this Tribunal, the respondents terminated the services of the applicant w.e.f. 3.1.2017 vide order dated 3.1.2017 (Annexure A-4). The applicant submitted a representation, Annexure A-5, that termination order be withdrawn as Suresh Kumar, does not appear to be interested in the case as he has not appeared to contest CWP despite service. The applicant then filed CWP No.183 of 2017 titled Budhi Chand Vs. Union of India & Others and on his request, the same was disposed of with a direction to the respondents to decide his representation, by affording an opportunity of hearing to him and meanwhile, operation of termination order was stayed, vide order dated 20.1.2017. However, the claim of applicant was rejected vide order dated 17.2.2017 on the ground that there is no proof that Suresh Kumar was not interested in the job and in any case the appointment of applicant already stood quashed and set aside by this Tribunal. The respondents sent offer of appointment to Suresh Kumar, vide letter dated 7.3.2017 (Annexure A-8), which was declined by him vide letter

dated 18.3.2017 (Annexure A-9), on the ground that due to lapse of time, he had taken up some other job. Hence, the instant O.A.

4. The O.A. is resisted by the respondents. They submit that since the appointment of the applicant was quashed and set aside by this Tribunal vide order dated 23.10.2008, as upheld by Hon'ble High Court vide order dated 7.10.2015, so applicant is not entitled to any relief.

5. The applicant has also filed a replication reiterating the submissions made in the O.A.

6. The learned counsel for the applicant would submit that since the very basis of quashing of selection and appointment of applicant having gone, as aggrieved has declined to take benefit of judicial pronouncements, the applicant cannot be denied benefit of appointment and continuation on the post in ECP. This is resisted by respondents on the ground that in view of order passed by this Court, as upheld by Hon'ble High Court, their hands are tight in extending any benefit to the applicant.

7. We have considered the submissions made on both sides carefully.

8. It is not in dispute that in an open selection for the post of ECP, the applicant and Suresh Kumar had participated along with others and had come on merit. Present applicant was placed at Sr. No.1 whereas Suresh Kumar was at Sr. No.2. Suresh Kumar felt aggrieved by this as his experience was not counted by the respondents. The selection and appointment of applicant in earlier round of litigation was quashed and set aside only on the ground that aggrieved person (Suresh Kumar) had not been extended any benefit of experience gained by him and had it been given to him, he would have been placed at Sr. No.1 of the list and applicant would have been placed in reserve list, vide order dated

23.10.2008 (Annexure A-2). The directions of this Tribunal are very clear that while quashing selection and appointment of applicant (Respondent No.3 in that case), respondents were directed to "reconsider the entire issue and if the applicant (Suresh Kumar) is found otherwise fit, issue him appointment order". In other words, the select panel was to be re-drawn in which Suresh Kumar was to be placed at Sr. No.2 and applicant was to be placed in reserve list. In short, both had interchanged their placements. But after doing this, when Suresh Kumar was offered appointment, he while expressing his thanks to the judicial forums for accepting his plea, declined to accept the same on the ground that he had chosen some other job. Thus, Sr. No.1 having declined the offer, the reserve panel came into operation and naturally he was to be offered appointment. But the official respondents, in their wisdom, have formed an opinion that since selection and appointment of applicant was quashed and set aside in earlier litigation, so he cannot be granted any benefit, which apparently is illegal and arbitrary. They have very conveniently forgotten the second part of the order of the Tribunal relating to reconsideration of entire issue which would apparently result in placing the name of applicant in reserve panel and if Sr. No. 1 declines to accept the appointment, the offer would go to reserve list candidate which in this case was the applicant. We would have gone with the respondents had Suresh Kumar accepted the appointment and then left the job. In that case perhaps applicant would not have been able to get any relief as it is settled law that mere empanelment does not create any right for appointment. But in this case the post has not been even filled up by candidate at Sr. No.1, who has declined the offer. Thus, there is force in the plea taken by the applicant.

9. In the wake of above discussion, this O.A. is allowed. The order dated 24.11.2017 read with order dated 16.2.2017 is quashed and set aside, more so in view of subsequent events in which Suresh Kumar refused to accept the appointment for the post of ECP. The respondents are directed to reinstate the applicant in service. However, the applicant would be granted pay and allowances for the period he remained out of job only on notional basis. The benefit of actual pay and allowances for such period is declined on the principle of "No work no Pay". The needful be done within a period of two months from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

PLACE: CHANDIGARH.  
DATED: 19.03.2019

HC\*

