

(2013) 01 DEL CK 0058
In the Delhi High Court
Case No : Writ Petition (C) 5675 of 2012

Himanshu Singh	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 14-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0058

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Medhansu Tripathi with Mr. Manindra Dubey, for the Appellant;
Sumeet Pushkarna, CGSC with Mr. Varun Dubey for R-1 and Mr. Athar Singh Dey,
for R-2, for the Respondent

Judgement

Pradeep Nandrajog, J.—Notwithstanding service report being awaited qua respondent No. 3 we proceed to dispose of the writ petition on account of the reason the petitioner, who was one out of the 18 persons who had approached the Central Administrative Tribunal, claims a right to be appointed to the post of Assistant Director under respondent No. 2. No relief is claimed against respondent No. 3. In fact we find that respondent No. 3 is the institute where, at the asking of respondent No. 2, the petitioner had successfully undertaken the course in Environment Management.

2. Though a moral wrong has been committed against the petitioner, but it would not be a civil wrong.

3. Responding to an advertisement issued by respondent No. 2 for being appointed as an Assistant Director the petitioner submitted his application and found himself empanelled in the merit list at Serial No. 2. As per the terms of the advertisement, the formal induction had to be upon the writ petitioner's successfully completing a post graduate Certificate course conducted by respondent No. 3; which the petitioner did.

4. Regretfully for the petitioner, formal letter offering appointment was not issued

and the stand taken by respondent No. 2 is its falling financial health; being so bad that even some retired employees have yet to be paid their terminal dues. Second reason is that on account of the precarious fiscal condition its operations have been scaled down thereby not warranting anybody to be appointed on permanent basis as Assistant Director in the proposed pay scale of Rs. 15600-39100 plus grade pay Rs. 5400.

5. It is settled law that even after preparing the select list it is open to the employer not to fill up the vacant posts as long as good reasons can be shown. Thus notwithstanding that respondent No. 2 has sanctioned posts of Assistant Directors, the fact of the matter remains that due to the failing fiscal health of respondent No. 2 and no work available it does not require, as of today, Assistant Directors.

6. Under the circumstances, no relief can be granted to the writ petitioner for the reason the view taken by the Central Administrative Tribunal is that it cannot direct respondent No. 2 to appoint the petitioner, as also all the persons who had joined with the writ petitioner before the Tribunal, to be appointed as Assistant Directors inasmuch as no working exists. However, in equity not only the writ petitioner but all other claimants before the Tribunal were held entitled to at least one relief. The same has already been granted as per the direction issued in Para 7 of the impugned decision, which Para reads as under:-

7. It is not for the Tribunal to force the respondents to take the decision to fill the posts of Assistant Director even if they are having the financial crunch but we would like to dispose of these applications with direction to the respondents that whenever the financial position improves and they are in a position to make recruitments to the post of Assistant Director, the applicants herein are to be considered and only then the other sources may be touched. With the above directions, both the applications are disposed of. No costs.

7. Suffice would it be to state that no further direction can be issued except to simply note that the petitioner claims of being at serial No. 2 of the merit list, meaning thereby that the clarification would be that as and when, and if, a post of Assistant Director is filled up, the same would be by offering the same to the candidates as per their merit position.

8. No costs. Dasti.