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

+ **W.P.(C) 8884/2017**

**ALL INDIA INSTITUTE OF MEDICAL SCIENCES (AIIMS) AND
ORS.**

..... Petitioner

Through: Mr. VSR Krishna, Advocate

versus

AJAY KUMAR

..... Respondent

Through: Mr. A.K. Behera with Mr. A.P. Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

10.10.2017

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Cav No.869/2017

Since the respondent has put in appearance, the caveat stands discharged.

W.P.(C) 8884/2017 & C.M. No.36319/2017

Issue notice. Counsel for the respondent/ caveator accepts notice. We have heard learned counsel for the parties and at this stage itself, we proceed to dispose of the petition.

The petitioner has preferred the present petition to assail the order dated 28.04.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.1297/2016. The impugned

order is an interim order passed in the OA preferred by the respondent. The petitioner sought to make appointment to the post of Chief Administrative Officer (CAO) on deputation basis. As per the recruitment rule for the post of CAO, the method of recruitment prescribed is “*100% by promotion, failing which by deputation*”. In case of recruitment by promotion, the recruitment rule, inter alia, provides that the grade from which promotion is to be made and eligibility conditions are “*Senior Administrative Officer with 5 years of regular service in the grade*”.

The respondent/ applicant preferred the aforesaid OA on the premise that he was serving as SAO having been appointed on 15.05.2015 and prior to that he was serving as Principal Private Secretary in the same grade/ scale of 3000-4500. The respondent, therefore, claimed that he was entitled to be considered for promotion to the post of CAO. The reliefs sought by the respondent in the OA are, inter alia, to declare that his appointment to the post of SAO is on “*transfer*” and is permanent. The respondent also sought amendment of the appointment order issued to him which was placed on record before the tribunal as Annexure A-7. He also sought a declaration that he is eligible for consideration for promotion to the post of CAO by promotion. Consequently, he sought quashing of the vacancy notice whereby the petitioner sought to fill up the post of CAO on deputation basis.

The tribunal at the initial stage of hearing of the OA passed an interim order restraining the petitioner from filling up the post of CAO through deputation till the next date of hearing. The matter was directed to be listed on 23.05.2016 for final disposal. However, it appears that due to heavy pendency, the OA has not been heard till date.

Learned counsel for the petitioner states that the matter is listed before the tribunal even today, though at sl. no.80 and is, therefore, not likely to be heard either today or even in the foreseeable future.

The submission of learned counsel for the petitioner is that the interim order passed by the tribunal is causing immense administrative inconvenience since the doctor who is otherwise expected to discharge clinical duties, is having to serve as an Administrator who has no experience or background in the said field. Therefore, the functioning of the institute of national importance i.e. AIIMS is suffering on account of the passing of the interim order which, in any event, does not grant any relief to the respondent except to ensure that in case his OA succeeds, he could stake his claim for consideration for promotion to the said post.

Though learned counsels have advanced submissions on claim of the respondent on merits, we do not wish to make any observation in that regard since the OA is pending and we would not like to prejudice the case of either party at this stage. However, we find merit in the submission of learned counsel for the petitioner that the interim order passed by the tribunal restraining the petitioner from making appointment on deputation need not have been passed and the rights of the respondent could have been secured by directing that any appointment made on deputation would be subject to decision in the OA.

Accordingly, we set aside the impugned order passed by the tribunal on 28.04.2016. We substitute the same by observing that any appointment made by the petitioner on deputation to the post of CAO shall be subject to the final decision in the respondents OA. The appointment letter issued by the petitioner to the person appointed on deputation shall clearly state that

the deputation is subject to the decision in the OA and that the deputation may be terminated prematurely in case the same is so required to be done in view of the orders that may be passed in the OA.

We request the tribunal to expedite the hearing in the OA at its earliest convenience.

The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

REKHA PALLI, J

OCTOBER 10, 2017

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