

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

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Date of Decision: May 24, 2023

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+ **W.P.(C) 6718/2023 & CAV 261/2023, CM APPLs. 26288/2023 and
CM APPL. 26289/2023**

GOVT OF NCT OF DELHI THOROUGH CHIEF SECERETARY &
ORS. Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD with Ms. Tania
Ahlawat, Mr. Nitesh Kumar Singh,
Ms. Palak Rohmetra, Ms. Laavanya
Kaushik and Ms. Aliza Alam,
Advocates.

versus

MAHESH KUMAR SAINI

.... Respondent

Through: Ms. Rashmi Chopra, Ms. Sehr Chopra
and Mr. Puneet Rathi, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO (Oral)

CM APPL. 26289/2023

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

CAV 261/2023

3. As Ms. Rashmi Chopra, learned counsel for the respondent has entered appearance, the Caveat stands discharged.

W.P.(C) 6718/2023 & CM APPL. 26288/2023

4. The challenge in this writ petition is to an order dated January 04, 2023, passed by Central Administrative Tribunal ('Tribunal', in short) in O.A. 1807/2021, whereby the Tribunal has allowed the Original Application by stating in paragraphs 7 & 8 as under:

"7. We accordingly allow the OA directing the respondents to consider the candidature of the applicant for appointment to the post of Computer Operator and Programming Assistant, Post Code No.115/14 and issue necessary order of appointment subject to verification of the aforesaid certificate, as also compliance of other procedural formalities. However, it is directed that the applicant shall not be entitled to any arrears of pay. The appointment order should be issued within a period of three months from the date of receipt of a certified copy of this order, failing which the applicant shall also be entitled to 25% of the arrears of salary.

8. It is also worth mentioning that in the present case one seat of Post Code No.115/2014 in OBC category has already been reserved in terms of the directions given by this Tribunal on 27.08.2021 against which the applicant can be easily adjusted.

No order as to costs."

5. The submission of Mrs. Ahlawat, learned counsel for the petitioners is that the Tribunal could not have given the direction in the manner it has given in para 7, when there is serious doubt as to whether the respondent possesses the necessary experience/eligibility of three years. She also submits that the Tribunal could not have overlooked the fact that the respondent having not uploaded his relevant documents at the first instance, could not have done so at a later stage and the same could not have been

considered by the petitioners.

6. On the other hand, Ms. Chopra would oppose the petition on the ground that the Tribunal while giving the directions in para 7, have relied upon the judgment of this Court in the case of *Tanya Sharma vs. DSSSB & Ors.*, W.P.(C) 2810/2022, which order is primarily with regard to the issue of uploading the documents at a later stage and this Court had justified the said action on the part of the candidate and her appointment has been upheld. She also submits that the *Tanya Sharma* (supra) has also been followed by this Court in the case of *DSSSB & Anr. vs. Khushboo Singhal*, W.P.(C)5592/2023.

7. In so far as the experience of the petitioner is concerned, Ms. Chopra has relied upon page 169 of the paper book to contend that the respondent infact has the necessary experience as he was in terms of the letter dated September 12, 2006, appointed as a faculty in Suman Computers Pvt. Ltd. and he continued to work on the said post till 2010. It is this document and the document at page 138 experience certificate, which were uploaded by the respondent on November 25, 2020 and April 07, 2021 in support of his case that he has the relevant experience. She submits that when infact, the respondent has the necessary experience, there was no reason for the petitioners to overlook the experience and deny the appointment of the respondent.

8. Having heard the learned counsel for the parties and noted the directions given by the Tribunal, we modify the directions at para 7 of the order of the Tribunal by stating that the petitioners shall consider the candidature of the respondent for appointment to the post of Computer Operator and Programming Assistant (COPA) (Post Code no. 115/14) by

making such inquiries with regard to the documents submitted by him on November 25, 2020 and April 07, 2021 respectively and if they conclude that he has the relevant experience, then they shall issue necessary order of appointment after following the other formalities. This exercise shall be carried out by the petitioners within eight weeks from today as an outer limit. The direction of the Tribunal in so far as that if the appointment order is not issued within three months, the respondent shall be entitled to the 25% of the arrears of the salary is concerned, the same be set aside.

9. We make it clear that the petitioners shall carry out the process within eight weeks from today.

10. With the aforesaid, the writ petition is disposed of.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MAY 24, 2023/akc