

**(2013) 04 DEL CK 0254****Delhi High Court****Case No:** LPA 26 of 2013

Deep Chand

APPELLANT

Vs

N.D.M.C.

RESPONDENT

**Date of Decision:** April 9, 2013**Hon'ble Judges:** D. Murugesan, C.J; V.K. Jain, J**Bench:** Division Bench**Advocate:** Saroj Bidawat and A.S. Tuisem Shimray, for the Respondent**Final Decision:** Dismissed**Judgement**

@JUDGMENTTAG-ORDER

1. Vide order dated 29/30th August 1968, the appellant was appointed as Operation Theatre Assistant. Vide order dated 9.12.1974, in Victoria Zanana Hospital of MCD, he was confirmed on the aforesaid post, with effect from 1.4.1972. The next promotional post available to the appellant was of O.T. Technician. The appellant was given current duty charge of the post of O.T. Technician with effect from 16.5.1979 and vide order dated 20.1.1984, he was regularized on the post of O.T. Technician. Vide order dated 13.2.1984, the appellant was given current duty charge of the post of Technical Assistant (OT). This was followed by an order dated 11.6.1991 promoting him to the post of Technical Assistant (OT) on regular basis. In the meanwhile, one employee, namely, Shiromani Joshi was promoted to the post of O.T. Technician on 8.8.1973. Three other employees were promoted to the aforesaid post on 21/22nd July, 1975. This was followed by promotion of two more persons on 10.11.1976. Claiming that he should have been promoted to the post of O.T. Technician with effect from 10.8.1976 and to the post of Technical Assistant (OT) with effect from 22.11.1983, an industrial dispute was raised by the appellant which was referred to the Industrial Tribunal for adjudication. No reply to the Claim Petition was filed by the respondent. The appellant filed his own affidavit in support of his claim. The Industrial Tribunal, vide order dated 2.11.2002, rejected the claim of the appellant, thereby answering the Award against him.

2. Being aggrieved from the said order, the appellant filed WP(C) No. 1439/2003. The learned Single Judge, vide impugned order dated 4.10.2012 dismissed the writ petition holding that the appellant had failed to show his entitlement for promotion to the post of O.T. Technician with effect from 1975 and to the post of Technician Assistant with effect from 22.11.1983.

3. We have heard the learned counsels for the parties. During the course of arguments, it transpired that neither the appellant nor the respondent had filed, before Industrial Tribunal, the documents which they later filed in the writ petition. As a result, Industrial Tribunal had no opportunity to examine the claim of the appellant in the light of those documents. When it is pointed out to the learned counsel for the parties, they agree that the impugned order of the learned Single Judge dated 4.10.2012 as well as the Award dated 2.11.2002 may be set aside and the Industrial Tribunal may be directed to consider the claim of the appellant afresh in the light of such documents as the parties may file before it in support of their respective case. In view of the above, we set aside the Award dated 2.11.2002 as well as the order of the learned Single Judge dated 4.10.2012 and remit the matter back to the Industrial Tribunal for passing a fresh Award after considering such documents as the parties may produce in support of their respective case. The parties are directed to appear before the Industrial Tribunal on 22nd April, 2013 along with such documents which they may like to file. The Tribunal shall pass a fresh Award in terms of this order within three months of the parties appearing before it.

The appeal stands disposed of, in terms of this consent order.