

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.976/97

New Delhi, this 23rd day of May, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Smt. Shanta Shastry, Member(A)

Bhopal Singh
LDC, Delhi Central Elect.Circle E-VIII
CPWD, 5th Floor, I.P.Bhawan
New Delhi .. Applicant

(By Shri P.T.S.Murthy, Advocate)

versus

Union of India, through

1. Secretary
Min. of Urban Affairs & Employment
Nirman Bhavan, New Delhi
2. Director General (Works)
CPWD, Nirman Bhavan, New Delhi
3. Superintending Engineer
Delhi Central Circle No.111
CPWD, IP Bhavan, New Delhi
4. Executive Engineer
Construction Division No.11
CPWD, IP Bhavan, New Delhi .. Respondents

(By Shri K.C.D.Gangwani, Advocate)

ORDER

Hon'ble Smt. Shanta Shastry

The applicant in this case was appointed as Chowkidar in the scale of Rs.196-232 on 9.7.82 in the Central Public Works Department (CPWD, for short) and was posted in the Sub-Division No.5 of the Executive Engineer, Construction Division (EE/CDn, for short) No.11, CPWD, New Delhi. He was regularly promoted as Lower Division Clerk (LDC, for short) vide order dated 14.5.96. He has sought his pay to be fixed in the post of LDC i.e. Rs.950-1500 (pre-revised) with effect from January, 1988 and compensation to be paid towards difference in the pay of Chowkidar and LDC till 16.5.1995.

(25)

2. Learned counsel for the applicant submits that while functioning as Chowkidar, the applicant had been asked by the EE/CDN.11 to work in his office and look after the seat of LDC which was lying vacant for quite some time and therefore the applicant was doing the work of LDC from January, 1988. He was in the same capacity till 16.5.96 when he was regularly promoted as LDC. The applicant represented to the EE and Superintending Engineer (SE, for short) for compensating him for the work he had discharged in the post. In fact, the matter was taken up by the EE with the SE who in turn recommended to consider the case of the applicant. However, in spite of the recommendation, no compensation was paid to the applicant on the ground that he was working as LDC at his own sweet will during the period January, 1988 to 16.5.1996.

3. The learned counsel for the applicant argues that no Government servant can do the work other than the duties assigned to him and there is no question of usurping the position by compulsion. He was discharging various duties assigned to a clerk as mentioned in the OA at 4(a) to (f). These are not the types of job assigned to a Chowkidar. Applicant in support of his claim has placed on record the relevant letter from the EE concerned recommending applicant's case. Applicant further states that many documents were marked to him and also files and ledgers were maintained by him in the capacity of Clerk and this has been duly authorised by the office of EE. It is therefore not correct to say that he was discharging the functions of LDC at his

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sweet will. Applicant is therefore entitled to compensation in the grade of LDC on the basis of equal pay for equal work.

4. The learned counsel for the respondents has categorically denied that the applicant was working in the Division Office from January, 1988 to May, 1996 as Clerk. The applicant was transferred from Sub-Dn.No.1 Exh.111 to Sub-Dn.No.111 on 27.6.88. He was further transferred to Sub-Dn.No.V on 17.9.92 and remained there till 16.5.96. He never remained attached either to Division Office or Sub-Dn. No.V throughout. He was rotated from one Sub-Dn. to another from time to time. He was never directed either verbally or in writing by the Division Office/Sub-Dn. Office to work against any vacant post of Clerk to carry out day-to-day work. He had appeared in the departmental examination of Group D staff for the post of LDC held on 26.8.92 and was declared successful on 23.10.92. Besides there was no regular vacancy of LDC from January, 1988 to May, 1996 in the Division Office.

5. In regard to the compensation after his transfer from the office he had applied for the benefit of pay fixation for the work he had allegedly been doing from January, 1988 onwards to the EE, with a copy to the SE. The EE had informed the applicant on 3.2.97 of the correct position. Moreover, the appointing authority in respect of Group C employees is SE (Coord), therefore the EE could not have asked him to work as LDC. It is significant that during his stay for the aforesaid period in Sub-Divisions 111 and V applicant never

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requested or represented to either of the authorities to compensate him. It was only when he was promoted and relieved from the office of EE that he had represented. Further, he had not exhausted all the channels. He only represented to the SE and the EE. He has also not explained as to whether the appointing authority had asked him to do the job of Clerk at every place of posting. The applicant for the first time made representation in October, 1996 stating that he has not been given any ad hoc promotion and he should be paid for having done the work of LDC.

6. We have heard both the learned counsel for the applicant as well as the respondents and perused the available material. Applicant's claim is that he should be paid compensation for the period from January, 1988 to 16.5.1996 when he discharged the duties of LDC, though his substantive post was that of Chowkidar in Sub-Division Office. Applicant has not produced any letter or document to substantiate that he was directed by the EE of Sub-Dn. No. III or No. V to discharge the duties of Clerk. According to the respondents, may be, on a few occasions the applicant was asked to copy certain documents. Beyond this, there was no assignment of any work of LDC to him and since the post is to be filled up through departmental examination, there is no question of applicant having worked as LDC in Division Office. No doubt the concerned EE had forwarded the applicant's case for compensation to be paid for the period he was allegedly asked to perform the duties of LDC. These are merely letters, some of them reminders. Nowhere any detailed statements have been attached

indicating that the applicant had performed certain duties of Clerk or rather was asked to perform the duties of Clerk during the relevant period. Even when a person is promoted or appointed on ad hoc basis to a particular post, he cannot be regularised unless the appointment or promotion is as per the R/Rules. Merely because the applicant is matriculate and therefore he was asked to do certain jobs occasionally does not entitle the applicant to be paid salary of the post. Also if he was working as LDC in Divisional Office it means that he was not doing justice to his job of Chowkidar in the Sub-Divisional Office. In our view, the applicant has not been able to convince us that he actually worked as LDC. We are, therefore, unable to grant any relief to the applicant in this matter. Accordingly the OA fails and is dismissed. No costs.

Shanta Shastray

(Smt. Shanta Shastray)
Member(A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

/gtv/