

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A NO. 277/2000

FRIDAY THIS THE 26th DAY OF APRIL, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

Gopidas K.A. S/o Appunni
Head Cook, Lakshmibai National College of
Physical Education (LNCPE), Trivandrum
now working at Sports Authority of India (SAI)
Sports Hostel, Quli Qutub Shah Stadium
Near High Court
Hyderabad-500 002.

Applicant

By Advocate Mr. K.C. Eldho

Vs.

1. The Principal
Lakshmibai National College of
Physical Education (LNCPE)
Trivandrum.
2. The Secretary
Sports Authority of India
Jawaharlal Nehru Stadium
New Delhi.
3. Union of India represented by the
Secretary to the Government
Department of Sports
Central Secretariat
New Delhi.....Respondents

By Advocate Mr. C.B. Sreekumar for R-3
Mr. Govindh K. Bharathan for R 1 & 2

The Application having been heard on 21.3.2002 this Tribunal
delivered the following on 26.4.2002:

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant was appointed by the first respondent
vide A-1 order dated 1.9.87 as a Head Cook at the Lakshmibai
National College of Physical Education (LNCPE), Trivandrum.
He claimed that his next post on promotion was Assistant Mess
Supervisor and that by the introduction of Sports Authority
of India (SAI for short) byelaws and re-structuring of the
cadre, the post of Asst. Mess Supervisor was converted as
Catering Assistant in the scale of pay of Rs. 1400-2300. He

was qualified to be promoted to the post of Catering Assistant. According to the applicant on the retirement of one Mr. P.K. Sankaran Assistant Mess Supervisor/Catering Assistant he was given charge of the said post by A-5 and A-5(a) orders but he was not given promotion. By A3 order of this Tribunal in OA 136/97, the applicant was directed to submit a representation and second respondent was directed to pass appropriate orders within three months. Applicant filed A-6 representation dated 24.9.99. In the meanwhile, the applicant was transferred from the first respondent institution and posted at SAI Sports Hostel, Hyderabad. According to him though the post of Assistant Mess Supervisor/Catering Assistant was available at the first respondent's institution he had not been considered for the same and declined the same by A7 order dated 4.1.2000. He alleged that A-7 was illegal and arbitrary. A-8 and A-9 would prove that the post of Assistant Mess Supervisor/Catering Assistant was available with the first respondent. Though it was not disputed that the post of Asst. Mess Supervisor was existing, it was stated by the respondents that the scale of pay of Rs. 1400-2300/- was not existing in the 1st respondent institution. Instead of considering the applicant to the post of Assistant Mess Supervisor which had been admitted, the first respondent had invited ~~xxx~~ applications for the post of Asst. Mess Supervisor on contract basis by notification dated 13.1.2000 in Mathrubhumi Daily (Annexure A-10). As per bye law if there was no post of Asst. Mess Supervisor, the first respondent had no authority to appoint anybody to the non-existent post. Had the applicant been considered and appointed as Assistant Mess Supervisor/Catering Assistant w.e.f. 22.6.94 the applicant would have been entitled for the post of Supervisor because the feeder category for Mess



Supervisor was Catering Assistant with 5 years experience. The act of the respondents 1 and 2 was arbitrary and was ~~xxxx~~ done in a dubious manner only to circumvent the direction of this Tribunal as contained in A-3 and also to deny the legitimate promotion of the applicant. Hence he sought the following reliefs through this O.A.

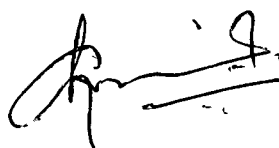
(a) Call for the records leading to annexure A-7 and quash the same as illegal.

(b) Declare that the applicant is working as Assistant Mess Supervisor/Catering Assistant with effect from 22.6.1994 pursuant to Annexure A-5 order and is entitled to be considered for appointment the post of Supervisor on completion of 5 years service as Assistant Mess Supervisor/Catering Assistant.

(c) Direct the respondents 1 and 2 to appoint the applicant to the post of Assistant Mess Supervisor/Catering Assistant under the 1st respondent institution and to consider him for promotion to the post of Supervisor if he is qualified to the same as per the SAI bye-law.

(d) Direct the 1st respondent not to make any appointment to the post of Mess Supervisor, pursuant to annexure A-10 since there is no such post as per the SAI bye law And/Or quash any such appointment if made by the 1st respondent, since the same is without any authority and contrary to the Bye law.

2. Respondents filed reply statement resisting the claim of the applicant. It was submitted that there had been neither a post of Assistant Mess Supervisor nor that of a Catering Assistant at the College at any point of time. Therefore, the question of the applicant's being qualified for promotion to the post of Assistant Mess Supervisor/Catering Assistant was meaningless. Similarly, the question of converting the post of Assistant Mess Supervisor to that of a Catering Assistant had no substance. Whether or not the applicant was qualified to be promoted as Assistant Mess Supervisor/Catering Assistant was infructuous because there existed no such post. Moreover the Tribunal had not upheld the contention of the applicant that he was eligible for the pay scale of Rs. 950-1500 from the date of



his appointment. The applicant was given the scale of Rs. 950-1500 from the date of enforcement of the Sports Authority of India service bye laws from 5.9.1992. The applicant could not claim the scale of pay from his initial appointment as there was no such provision in the said Service Bye Laws to give him the pay scale with retrospective effect. In support they relied on the judgment of the Hon'ble High Court of Kerala in OP NO. 17739/97 (LNCPE Vs. Vijendra Babu and Others) The SAI by-laws provide that the Head Cook was entitled to the scale of pay of Rs. 950-1500; the same had already been accepted by the SAI w.e.f. 5.9.92. The applicant had taken wrong plea before this Tribunal by designating P.K. Sankaran as Catering Assistant. Shri P.K. Sankaran was temporarily promoted from the post of Gestetner Operator at LNCPE, Gwalior and posted to LNCPE, Trivandrum as Assistant Mess Supervisor on purely adhoc basis. On his retirement the applicant was directed to take charge of the mess utensils and other effects as the applicant was the seniormost official in the mess management. It was neither promotion for him nor could it be considered as promotion. Simply possessing certain qualifications for a particular post did not confer an automatic right on a person to ask for promotion to a higher post the applicant even though The order of this Tribunal in O.A. 136/97 did not make him entitled to promotion as Assistant Mess Supervisor in view of the vacancy on the retirement of Mr. P.K. Sankaran as he was borne on the strength of LNCPE, Gwalior and not LNCPE, Trivandrum. There was no post of Assistant Mess Supervisor/Catering Assistant available with the 1st respondent therefore, the question of considering the request of the applicant for promotion to such a post did not arise. Nowhere had it been admitted either by 1st or 2nd respondents that there existed a post of Assistant Mess Supervisor in the

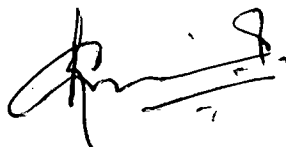


scale of Rs. 1400-2300. The Byelaws of SAI 1992 made no mention of the post of Assistant Mess Supervisor. The applicant had tried to mislead the Tribunal by suggesting the designation "Catering Assistant" was the corresponding substitute for Assistant Mess Supervisor. Moreover, Shri Sankaran worked with the 1st respondent as Assistant Mess Supervisor in Rs. 950-1500 and not in Rs. 1400-2300 purely on temporary basis. The applicant was simply given additional charge of looking after the mess but not substantially or notionally promoted. The applicant himself sought the quashing of consequent acts of Annexure A-10 on the ground that there was no post of Assistant Mess Supervisor. This meant that he was admitting that there was no post of Assistant Mess Supervisor in the college. Neither there was any post of Catering Assistant in the college.

3. Heard learned counsel for the parties.

4. The learned counsel for the applicant took us through the A-3 judgment of this Tribunal dated 15.9.99 in O.A. 136/97. He specifically referred to para 4 and submitted that in the light of the order passed by this Tribunal respondents could not be heard to say that there was no post of Assistant Mess Supervisor. According to him A-7 had been issued without proper application of mind and was liable to be set aside and quashed and the respondents directed to promote the applicant to the post of Assistant Mess Supervisor/Catering Assistant with effect from 22.6.1994..

5. The learned counsel for the respondents took us through the reply statement and submitted that the applicant was not entitled for any of the reliefs sought for as long as there existed no post of Assistant Mess Supervisor/Catering



assistant. He also cited the judgment of the Hon'ble High Court of Kerala in OP NO. 17739 of 1997 decided on 1.12.1999 (The LNCPE and Others Vs. Vijendra Babu and another) and order of this Tribunal in O.A. No. 605/97 (Vijayakumar T. Vs. Sports Authority of India and another)

6. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record.

7. We find that the applicant had approached this Tribunal earlier through O.A No. 136/97. From A-3 order of this Tribunal in O.A. 136/97 dated 15.9.99 we find that in that OA the applicant sought to quash A-7 therein which was an order dated 2.12.96 issued by the second respondent therein viz. the Secretary, SAI. This Tribunal did not grant the relief sought for to quash A-7 order therein. Instead it permitted the applicant to submit a detailed representation to the second respondent therein viz. the Secretary, SAI, New Delhi for redressal of his grievances and the the second respondent was directed to consider the same within three months from the date of receipt of the representation. Applicant filed A-6 representation dated 24.9.99. According to the applicant as he he had been appointed w.e.f. 1.9.87 and the other employees had been given the pay scale of Rs. 950-1500 from the date of his initial appointment he was also entitled for the said scale of Rs. 950-1500 from the date of his initial appointment. In that case he would have completed 5 years of service as Head Cook on 1.9.92 and hence he would have been eligible for promotion to the post of Assistant Mess Supervisor from 29.6.94 the date on which Shri P.K. Sankaran who was working



as Assistant Mess Supervisor retired on superannuation. The applicant also submitted that the post of Assistant Mess Supervisor and Catering Assistant are equivalent. Therefore the applicant had prayed in A-6 that his pay be fixed in the pay scale of Rs. 950-1500 from the date of his initial appointment to promote him to the post of Catering Assistant w.e.f. 29.6.94. In A-7 reply the second respondent had advised that the grant of pay scale of Rs. 950-1500 to S/Shri T. Vijayakumar and Unnikrishna Pillai were not correct and were based on an administrative error, the same could not be cited as a precedent. They had been given show cause notice and after consideration of the show cause notice if it was decided to continue to grant of higher pay scale to them from the date of their initial appointment, then the case of the applicant would also be considered in a like manner. In case a decision was taken to grant higher pay scale to S/Shri Vijayakumar and Unnikrishna Pillai only from 5.9.92 then the case of the applicant would also be treated accordingly. Regarding the second issue raised by the applicant that the applicant had taken over the charge of the post of Assistant Mess Supervisor held by Shri P.K. Sankaran w.e.f. 29.6.94 the second respondent stated that there was no post of Assistant Mess Supervisor sanctioned for the LNCPE, Trivandrum. It had been categorically stated that Shri P.K. Sankaran was posted from LNCPE, Gwalior to LNCPE, Trivandrum on his own request and hence there was no post of Assistant Supervisor existing at LNCPE, Trivandrum. The above position had also been averred in the reply statement which had not been denied by the applicant by filing any rejoinder. We note that the case of Shri Vijayakumar had been decided by this Tribunal in O.A. 605/97 holding that he would be entitled for the grade of Rs. 950-1500 only from 5.9.92. We also note from the judgment of Hon'ble High Court



of Kerala dated 1.12.99 in O.P.No. 17739/97 that the respondent Sri Vijendra Babu therein, an Electrician can get the grade of Rs. 950-1500 only from 30.9.1989 and not from the date of his initial appointment, 30.9.1989 being the date from which SAI decided to grant the scale. As this Tribunal in O.A. 136/97 had come to the conclusion that the applicant had completed 5 years of service in the scale of Rs. 950-1500 only on the basis of the treatment given to Shri Vijaya Kumar and now that we find that Shri Vijaya Kumar had been given the benefit only from 1992 the applicant has not completed 5 years on 22.6.1994. Therefore, the applicant would not be entitled for the declaration as prayed for in the second relief sought for by him.

8. According to the respondents there was no post of Assistant Mess Supervisor/Catering Assistant sanctioned for LNCPE, Trivandrum and the same has not specifically been denied by the applicant. Further we do not find any strength in the reliance placed by the applicant on A-8 and A-9 for the availability of the post of Asst. Mess Supervisor. A-8 and A-9 were issued in March, 1987, whereas what is before us is the question of existence of the post in 1994. Further, according to the respondents, Mr. Sankaran, from whom the applicant taken over charge on 29.6.1994 was in the grade of Rs 950-1500-the grade the applicant had been holding from 5.9.1992.

9. We also find substance in the respondents plea that just because the applicant fulfills the eligibility condition, he is not entitled for promotion to a higher grade post unless there existed such a post. In this case in our view the existence of the post is not established.




10. In view of the above we do not find any merit in the applicant's plea for a declaration that he was entitled to be promoted to the post of Asst. Mess Supervisor/ Catering Assistant on the retirement of Shri P.K. Sankaran.

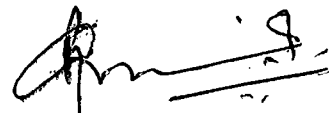
11. In the result we do not find any reason to interfere in A-7 order issued by the second respondent and hold that the applicant is not entitled for the reliefs sought for by him.

12. Accordingly, we dismiss this OA with no order as to costs.

Dated the 26th Day of April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1 : True copy of the appointment order vide No.Estt (6)/1130/87 dated 1.9.1987.
2. A-2 : True copy of the Certificate in catterring, having Register No.60, issued by the department of Technical Education in favour of the applicant dated 29.8.80.
3. A-3 : True copy of the order in OA 136/97 dated 15.9.99.
4. A-4 : True copy of the relevant portion of the draft SAI bye-law and the schedules attached therein.
5. A-5 : True copy of the order dated 22.6.94 vide Office Order No.262/94.
6. A-5a: True copy of the Office order vide No.256/94 dated 3.6.94 issued by 1st respondent.
7. A-6 : True copy of the representation submitted by applicant dated 24.9.99.
8. A-7 : True copy of the order dated 4.1.2000 vide No.13(118)/97-Legal Cell issued by the 2nd respondent.
9. A-8 : True copy of the office order dated 24.3.87 vide No.(10)/I-240/87.
10. A-9 : True copy of the letter issued to K.R.Sasidharan dated 19.9.87 vide No.(11)/207/87.
11. A-10: True copy of the advertisement published in Mathrubhumi daily dated 13.1.2000.

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