

Date of Decision: 1.11.02

TA 11/2000 (SBCWP No.2299/96)

Kailash Chand Sharma, LDC, Institute of Hotel Management, Catering Technology & Applied Nutrition, Sikar Road, Bani Park, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Tourism, New Delhi.
2. Principal, Institute of Hotel Management, Catering Technology & Applied Nutrition, Sikar Road, Banipark, Jaipur.
3. Secretary, Tourism Department, Govt. of Rajasthan, Secretariat, Jaipur.

... Respondents

CORAM:

HON'BLE MR. JUSTICE G.L. GUPTA, VICE CHAIRMAN

HON'BLE MR. GOPAL SINGH, ADM. MEMBER

For the Applicant

... Mr. S.K. Singh

For the Respondents

... Mr. P.V. Calla, Adv. brief holder
for Mr. R.C. Joshi

ORDER

PER MR. JUSTICE G.L. GUPTA

The applicant seeks the following reliefs :

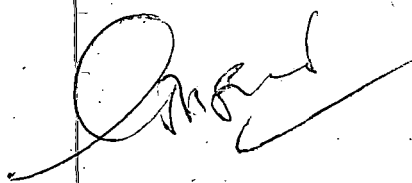
- i) Issue an appropriate writ, order or direction in the nature thereof and thereby direct the Respondents to make payment of regular pay scale of the post of LDC to the petitioner from the date he was appointed on daily wages till his substantive appointment of the post;
- ii) issue an appropriate writ, order or direction in the nature thereof and thereby direct the Respondents to make payment of regular pay scale of the post of Store Keeper to the petitioner for the period he had worked on the said post which is about 7 years 11 months;
- iii) issue an appropriate writ, order or direction in the nature thereof and thereby direct the respondents to consider the case of the petitioner for promotion on the post of Store Keeper as per the Rules;
- iv) issue any other appropriate order or direction which the Hon'ble Court deems fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner and cost be awarded."

2. A writ petition was filed before the Rajasthan High Court under Article-226 of the Constitution of India alleging that the applicant was initially appointed as LDC on daily wage basis under respondent No.2 on 9.11.84 and thereafter he was given appointment on substantive basis. It is alleged that he was provisionally promoted to the post of Store Keeper but he was not paid salary of the said post. It is stated that the applicant having put in eight years service is the only eligible person for promotion to the post of Store Keeper but the respondents have not issued the orders of his promotion. The applicant sent a legal notice to the respondents for giving the benefit of regular pay scale of the post of LDC from 1984 to the date of his substantive appointment, but no reply was given. Hence this OA.

3. In the counter, the respondents' case is that the applicant has been given regular appointment on the post of LDC w.e.f. 10.10.90, vide Ann.R/1, and that he was never promoted to the post of Store Keeper. It is stated that the applicant has not completed the prescribed experience period and, therefore, he is not entitled to be promoted to the post of Store Keeper. It is denied that at any point of time the charge of Store Keeper was given to him. It is prayed that the OA be dismissed.

4. We have heard the learned counsel for the parties and perused the document placed on record.

5. It is now admitted case of the parties that in the order Ann.R/1 appointment of the applicant has been shown on ad hoc basis but it has been treated on regular basis. The applicant is thus working as LDC on regular basis w.e.f. 10.10.90.



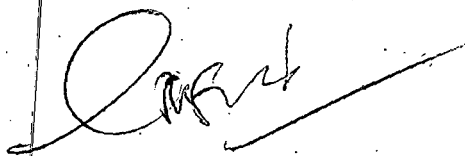
6. The Rules of Recruitment annexed with the reply show that a LDC can be promoted to the post of UDC or Store Keeper after he puts in eight years service in the grade. The writ petition was filed in the year 1996, which has been received by this Tribunal by way of transfer in the year 2000. In the year 1996, it is evident, the applicant had not put in required eight years service and, therefore, he could not claim promotion to the post of Store Keeper.

7. The applicant cannot be also granted the regular pay scale of the post of LDC from the date he worked on daily wage basis. It is not the case of the applicant that when he was given appointment on daily wage basis, the prescribed procedure for recruitment to the post of LDC was followed. The applicant having accepted the engagement on daily wage basis cannot now claim that he is entitled to the full salary of the post of LDC for the period from 1984 to 9.10.90.

8. It may be that the applicant was asked to work for some period in the Store Section but that did not entitle the salary in the pay scale of Store Keeper. Stop-gap arrangements are always made. The applicant at best could claim the double duty allowance if his case came within the rules.

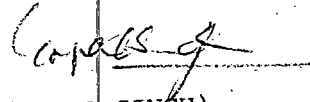
9. During the course of arguments, the learned counsel for the applicant stated that in the year 1999 some order has been passed giving promotion to the applicant, for which ignorance was pleaded on behalf of the respondents.

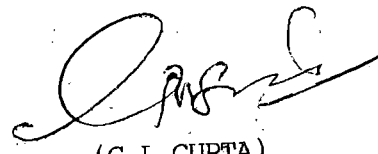
10. Be that as it may, the applicant cannot succeed in this OA. At the most, it can be said that if any order favourable to the applicant

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has been passed, the dismissal of this OA shall not render that order invalid.

11. For the reasons stated above, we find no merit in this OA, which is hereby dismissed. No order as to costs.


(GOPAL SINGH)
MEMBER (A)


(G.L.GUPTA)
VICE CHAIRMAN