

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT GWALIOR**

Original Application No. 51 of 2004

Jabalpur, THIS THE 24th DAY OF October, 2005.

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Manoj Kumar Dash S/o Shri Prafulla
Chandra Dash, aged 39 years,
Occupation – Lecturer in Institute of Hotel Management
Gwalior, R/o Bhadauri Sadan Khwaja Nagar
Gwalior (M.P.) Applicant

(By Advocate – Shri S.C. Sharma)

V E R S U S

1. The Union of India Through
Secretary Ministry of Tourism
New Delhi.
2. The Chairman,
Secretary Department of Tourism,
Govt. of M.P. Vallabh Bhawan,
Bhopal, M.P.
3. Principal,
Institute of Hotel Management
Maharajpura, Gwalior, M.P.
4. A.K. Roy, Lecturer
Institute of Hotel Management,
Gwalior, M.P. Respondents

(By Advocate – Shri Prashant Sharma for private respondents
None for official respondents)

O R D E R

By M.P. Singh, Vice Chairman –

By filing this Original Application, the applicant has sought
the following main relief :-

“(A) That the appointment order dated 31.7.95 of
respondent No.4 contained in Annexure A/6 be quashed.



(B) That the seniority list contained in Annexure A/8 be quashed and respondent No.3 be directed to prepare correct seniority list by placing the name of respondent No.4 below the name of applicant i.e. applicant be placed at S.No.2 and the respondent No.4 be placed at S.No.3."

2. The brief facts of the case are that the applicant was initially appointed as Assistant Lecturer in the Institute of Hotel Management, Gwalior, vide order dated 30.6.1989. According to Rule 5.2 of the Institute of Hotel Management, Catering Technoloty and Applied Nutrition (Gwalior) Recruitment Rules,1994 (hereinafter referred to as 'the Recruitment Rules'), no direct recruitment can be made if eligible and suitable candidates are available for promotion. Rule 5.2 of the Recruitment Rules is reproduced as under:-

"Vacancies against posts normally required to be filled up by promotion may be filled by direct recruitment when no employee is eligible or available or found suitable for promotion".

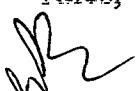
The post of Lecturer is a promotional post and is filled up by promoting the Assistant Lecturer on the basis of merit from amongst the Assistant Lecturers eligible or available in the Institute having minimum experience of 5 years in the relevant field failing which by direct recruitment. Since the applicant was appointed as Assistant Lecturer on 26.7.1989, he had acquired the experience of 5 years on 26.7.1994 and had a 3 years diploma in Hotel Management in 1st division. The respondents, without considering the name of the applicant for promotion to the post of Lecturer, have issued an advertisement in the Employment News dated 21.1.1995 for filling up the post by direct recruitment from against S.C. category candidates. The applicant has further submitted that there are no rules for reservation for scheduled caste category to recruit on the post of Lecturer through advertisement. The private-respondent no.4 applied for recruitment against the reserved post of Lecturer and he was selected by the official-respondents vide order dated 4.7.1995 and appointed on 31.7.1995.



The official-respondents declared the respondent no.4 as permanent vide order dated 30.3.1997. The respondent no.3 on the recommendations of the Departmental Promotion Committee dated 26.8.1996, promoted the applicant on the post of Lecturer vide order dated 27.8.1996. The respondents have published the seniority list of officers in the grade of Rs.6500-10500 as on 1.1.2003. The name of the applicant is shown at serial no.3 whereas respondent no.4 has been shown at serial no.1. According to the applicant, the seniority assigned to the private-respondent no.4 is wrong as the applicant was required to be appointed to the grade of Lecturer earlier than private-respondent no.4 and is, therefore, senior to the private-respondent. Hence this O.A.

3. The private-respondent no.4 in his reply has stated that there is a delay of 9 years and therefore instant OA is barred by limitation and deserves to be dismissed on this ground alone. According to him, the post of lecturer was reserved for a candidate belonging to scheduled caste. The applicant does not belong to scheduled caste. The recruitment was made as per the recruitment rules. As no reserved category candidate, was eligible and available for being promoted to the post of Lecturer, the official-respondents have rightly advertised the post. The respondent no.4 has applied and has been selected and appointed against the post. According to respondent no.4, the applicant may be eligible for promotion against a general category post, in his turn, but in the year 1995, there was no vacant post of Lecturer to be filled by promotion from a general category candidate. Hence there was no question of granting him promotion to the post of lecturer in the year 1995.

3.1 The respondent-department in their reply have stated that there is a delay of 8 years in filing this Original Application. The private-respondent no.4 was recruited as per the rules of 1994, which existed at the relevant point of time. The new recruitment rules, which have been framed by the respondents have come in



force from July,2003. Since the post of Lecturer, which was earmarked to be filled up by a scheduled caste candidate, could not be filled up since 1992, the DPC decided to fill the post of Lecturer by direct recruitment, and carried forward the same post on account of non-availability of the SC candidate in the feeder cadre for promotion to the post of Lecturer. The respondent no.4 was selected and appointed as per the recommendations of the DPC and there is no illegality in the appointment of respondent no.4. The applicant has not agitated the matter earlier and it was only in the year 2004 he has filed this O.A. raising the question of seniority in the grade of Lecturer. The seniority list has been prepared in accordance with rules and the name of respondent no.4 has rightly been mentioned at serial no.1.

4. We have heard the learned counsel of parties and have also given careful consideration to the rival contentions.

5. We find that the applicant was initially appointed as Assistant Lecturer vide order dated 30.6.1989 and was promoted to the post of Lecturer on 27.8.1996, whereas the respondent no.4 has been appointed as a Lecturer 31.7.1995. We also find that the private-respondent no.4 has been selected by way of direct recruitment against a post reserved for scheduled caste category. The private-respondent no.4 belongs to SC category and he has been recruited against the vacancy which was available since 1992. The applicant has been promoted as Lecturer in his turn in the year 1996 against the vacancy earmarked for general category candidates. Thus, we find that the seniority list issued by the official respondents in the year 2003 is in accordance with the rules and seniority assigned to the private-respondent no.4 is with reference to the date of joining the post. In view of these discussions, we do not find any ground to interfere in the matter.

6. We further find that by filing this OA in the year 2004, the applicant has also challenged the appointment of respondent no.4, which was made in the year 1995. He has not explained the delay



of 9 years. There is no application for condonation of delay. The present case cannot be treated as a continuous cause of action. Thus, this OA is also liable to be dismissed on the ground of barred by limitation.

7. In the result, for the reasons stated above the Original Application is dismissed, however, without any order as to costs.

(Madan Mohan)
Judicial Member


(M.P.Singh)
Vice Chairman

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 (3) पूर्वांश वा दक्षिणांश वा अ. १०० वा राजिया
 (4) दक्षिणांश वा दक्षिणांश वा अ. १०० वा राजिया
 सवाल एवं लालस्यक वर्तमानी देख १००

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