

(9)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

22.11.2011

OA 307/2011

Rejoinder & Addl.
A. affidavit filed
S/ 23/11

Mr. S.S. Shekhawat, Counsel for applicant.
Mr. Amod Kasliwal, Counsel for respondent no. 3.
Mr. Anupam Agarwal, Counsel for respondent no. 4.

The applicant has filed rejoinder, which has been followed by the additional affidavit.

List it on 30.11.2011.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

ahq

30-11-2011

OA 307/2011

Mr. S. S. Shekhawat, Counsel for applicant.
Mr. Amod Kasliwal, Counsel for respondent no. 3.
Mr. Anupam Agarwal, Counsel for respondent no. 4.
Mr. Anupam Agarwal, Counsel for respondent no. 5.
None present for other respondents.
Held. O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K. S. Rathore)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 30th day of November, 2011

Original Application No. 307/2011

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Virendra Singh Yadav
s/o Shri R.S.S.Yadav,
r/o Flat No.60 (GF), Jalvayu Vihar,
Vidhyadhar Nagar, Jaipur
Presently working as Sr. Lecturer at
Institute of Hotel Management,
Catering Technology and Applied
Nutrition, Bani Park, Jaipur.

.. Applicant

(By Advocate: Shri S.S.Shekhwat)

Versus

1. Union of India
represented through
Secretary, Ministry of Tourism,
Government of India,
Transport Bhawan 1,
Parliament Street,
New Delhi.
2. Secretary cum office Chairman,
Department of Tourism,
Government of Rajasthan,
Secretariat, Jaipur
3. Principal,
Institute of Hotel Management,
Catering Technology and Applied
Nutrition, Bani Park, Jaipur

4. Mr. R.K.Kapil,
s/o Shri Ram Ratan Kapil,
r/o B-173, Vaishali Nagar, Jaipur
retired as Head of Department at
Institute of Hotel Management,
Catering Technology and Applied
Nutrition, Bani Park,
Jaipur.

.. Respondents

(By Advocate: Shri Amod Kasliwal for resp. No.3 and Shri Anupam Agarwal for resp. No.4)

ORDER (ORAL)

By way of this OA, the applicant prayed for the following reliefs:-

- i) Set aside and quash the order of appointment dated 16/5/2011 (Ann.A/1) and all the consequential orders passed in favour of respondent No.4 giving him benefit of the post of Head of Department.
- ii) Quash the Reply (Annexure A/2) dated 21.06.2011 as being against the provision of Law and on wrongful appreciation of Rules.
- iii) That the respondents may be directed to appoint the applicant on the post of Head of Department w.e.f. 24.5.04.
- iv) Any other suitable order or direction which this Hon'ble Court deems expedient in the fact and circumstances of the case may kindly be passed in favour of the applicant.



2. We have perused the impugned order Ann.A/1 by which respondent No.4 Shri R.K.Kapil was appointed as Head of Department (HOD) w.e.f. 24.5.2005 on notional basis in the pay scale of Rs. 10000-15200 with the stipulation that this post of HOD will automatically lapse after retirement of Shri R.K.Kapil on 30th June, 2011. This appointment was approved on the recommendation of Board of Governance and Chairperson, IHM, Jaipur after seeking legal opinion in the matter as directed by Board of Governance.

3. The present OA has been filed on 20th July, 2011 after retirement of respondent No.4 Shri R.K.Kapil and in view of the order dated 16.5.2011, immediately after retirement of the HOD, the post of HOD stood automatically lapsed. Therefore, the relief claimed by the applicant to quash and set-aside the order of appointment dated 16.5.2011, is meaningless since the term of the post of HOD expired on 30th June, 2011 and the post stood automatically lapsed. The benefits which are already taken by respondent No.4 cannot be quashed and set-aside after attaining finality of the order dated 16.5.2011, as discussed hereinabove.

4. Now with regard to the relief claimed by the applicant to quash reply dated 21.6.2011 (Ann.A/2) as being against the provisions of law and on wrongful appreciation of rules is concerned, we have gone through the order dated 21.6.2011



by which representation of the applicant was thoroughly considered and it is replied that the post of HOD is filled up as per Recruitment Rules from amongst the feeder cadre of Sr. Lecturers and as and when the vacancy of HOD arises in future, his candidature would be placed before the Departmental Promotion Committee for consideration alongwith other eligible candidates and the same is rejected. In para-4(5) of the reply filed by respondent No.3 it is clearly indicated by the respondent that candidature of the applicant will be considered for the post of HOD in accordance with the Rules as and when the vacancy shall arise for the said post.

5. Admittedly, at present against two posts two persons are working as HOD namely S/Shri Sher Singh and R.Mangal. During the course of arguments, it has been given out by the respondents that applicant is likely to be considered for promotion on the post of HOD even in the month of December or January, 2012.

6. We have also considered the rival submissions of the respective parties. It is evident that the respondents have restructured the strength. As per documents Ann.R/3 and R/4 earlier sanctioned posts of HOD were three in the year 1996-97 which has been rationalized and after rationalization of the academic staff sanctioned posts at IHM, Jaipur, the post of HOD reduced to one and now admittedly again as per



rationalization, available posts of HOD are two and as stated hereinabove, two persons are already working against these posts i.e. S/Shri Sher Singh and R.Mangal.

7. As undertaken by the respondents, the moment vacancy of HOD occurs, the candidature of the applicant will be considered for the post of HOD. Thus, the relief claimed by the applicant cannot be granted in the manner claimed by him as the respondents undertake to consider his candidature in future and therefore, we deem it proper to direct the respondents that as soon as the vacancy of HOD is made available, the respondents are directed to consider candidature of the applicant for the post of HOD.

8. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)

Admv. Member

K. S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/