



2024:DHC:8114-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 961/2016**

BHIM SINGH

.....Petitioner

Through: Mr. U. Srivastava and Mr
Gaurav Shrawat, Advs.

versus

GOVT OF NCT OF DELHI AND ORS

.....Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar Singh, Ms.
Laavanya Kaushik, Ms. Aliza Alam, Mr.
Mohnish Sehrawat, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

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18.10.2024

C. HARI SHANKAR, J.

1. The petitioner assails judgment dated 30 April 2014 as well as order dated 19 September 2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi¹ in OA 4275/2012 and RA 135/2014, whereby the learned Tribunal has dismissed the OA and the RA.

2. The petitioner was working as a Carpenter/Mechanic in the Directorate of Education², Government of NCT of Delhi. By the

¹ "the learned Tribunal", hereinafter

² "DOE", hereinafter

Signature Not Verified

Digitally Signed By: AHT
KUMAR WP (C) 961/2016
Signing Date: 21.10.2024
18:27:10



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following order dated 2 November 1995, the earlier incumbent of the post of Store Keeper in the DOE was asked to hand over the charge of the said post to the petitioner forthwith:

“Government of National Capital Territory of Delhi,
Directorate of Education (Science Branch),
Old Gargi College Building,
Lajpat Nagar-IV, N. Delhi

No. DE40(6) (192) (P. File)/94/Sc. Br. /17587

Dt. 2-11-95

ORDER

Consequent upon his transfer from Sc. Branch to Science Centre No.1, Hakikat Nagar, Delhi, Sh. Bhupinder Singh UDC is hereby ordered to hand over his charge of store to Sh. Bhim Singh, Mech, immediately.”

Sd/-
D.D.E. (Science)

No. DE 40 (192) (P. File)/94/Sc. Br. /17586-17588

Dt. 2-11-95

Copy to:

1. Sh. Bhupinder Singh, UDC
2. Sh. Bhim Singh, Mech, with the direction to take charge from Sh. Bhupinder Singh
3. O/o file.

Sd/-
D.D.E. (Science)

3. Mr. Srivastava, learned Counsel for the petitioner, has drawn our attention to the following orders/communications passed thereafter which reflect the petitioner’s status as a “Store Keeper”:

- (i) order dated 23 October 1996 issued in the case of one Dr. J Singh, Senior Science Counselor, a copy of which was marked, among others, to “Sh. Bhim Singh, Store Keeper”,



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- (ii) order dated 26 May 1997 in the case of one Mr. R.K. Madan, Instructor, a copy of which was marked to “Sh. Bhim Singh, Store Keeper”,
- (iii) order dated 28 September 2001, which specifically reads as under:

“Government of National Capital Territory of Delhi,
Directorate of Education (Science Branch),
Old Gargi College Building,
Lajpat Nagar-IV, N. Delhi

No. DE 40(6)/ /SCB/93/

Dt. 9.2001

ORDER

Sh. Bhim Singh, Mechanic *working as store keeper* in Science Branch is directed to maintain records of Newspaper and magazines received in this office and get the old papers auctioned from time to time under rules. He will also verify the newspaper bills before its payment to the newspaper agency.

Sd/-
R.S. Khokhar
Dy. Director of Education (SC&TV)”

- (iv) certificate dated 28 March 2013 issued by the Dy. Director of Education, recording his impression about the petitioner, in which it is specifically stated that the petitioner was “looking after the work of Caretaking and Store Keeping for a long time with the best of his abilities in addition to his assigned duty of Mechanic”.

4. There is no order which states that the petitioner was only asked to hold the post of Store Keeper on look after or current charge basis. In fact, these orders indicate that the petitioner was actually working



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as Store Keeper and there is nothing to indicate that he was discharging only routine duties of the post and not all the duties of Store Keeper.

5. The petitioner addressed a representation to the DOE on 29 August 2011, seeking to be paid the difference between the pay of Mechanic and Store Keeper.

6. Mr. Singh, learned Counsel for the respondent, acknowledges that the difference is not substantial.

7. In the representation dated 29 August 2011, it has specifically been averred that the petitioner was working as Store Keeper in the Science Branch of the DOE but was being paid the salary of only Mechanic/Carpenter. We may reproduce the following paragraphs from the said representation in this context:

“a) Because the applicant is working as store keeper regularly since November. 1995 in pursuance of orders of DDE(SC) dt. 02/11/1995 (Annexure - II). dt. 20/04/2000 (Annexure - III) and a certificate dt 31/01/2002 (Annexure - IV) issued in this regard by the Supdt., Science Branch. Directorate of Edn, Delhi.

b) Because the applicant is, at present also since 1995, working as store keeper in science branch without any break or replacement on the said post.

c) Because the applicant is working on a higher post and shouldering higher responsibilities of a storekeeper for which a revised pay scale of Rs 5000-150-8000 was attached and granted w.e.f. 01/01/1996 under CCS (Revised Pay). Rules,1997 and consequently the scale was further revised / attached / and granted appropriately wef. 01/01/2006 by the Sixth Pay Commission under CCS (Revised Pay) Rules. 2007.”



Thus, the specific stand of the petitioner, in his representation, was that he was discharging the duties of Store Keeper, but was being paid only the pay of Mechanic/Carpenter.

8. Till the filing of the OA, the respondent did not condescend to reply to the petitioner's representation dated 29 August 2011. The petitioner, therefore, approached the learned Tribunal for relief by way of OA 4275/2012, which stands dismissed by the judgment under challenge.

9. In the OA, too, the petitioner has specifically averred, in para 4.3, that since 2 November 1995, he was working as Store Keeper in the Science Branch in the DOE. He has also invoked FR 49(iii)³. It has also been pointed, in the OA, that his designation was reflected as

³ **FR 49** The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government. In such cases, his pay is regulated as follows: -

- (i) Where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the Competent Authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post;
- (ii) Where a Government servant is formally appointed to hold dual charges of two posts in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge provided that, if the Government servant is appointed to an additional post which carries a special pay, he shall be allowed such special pay;
- (iii) Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, or of the highest post, if he holds charge of more than two posts, in addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 45 days but not exceeding 3 months provided that if in any particular case, it is considered necessary that the Government servant should hold charge of another post or posts for a period exceed 03 months, the concurrence of the Department of Personnel and Training shall be obtained for the payment of additional pay beyond the period of 03 months;
- (iv) Where an officer is formally appointed to hold full additional charge of another post, the aggregate of pay and additional pay shall in no case exceed Rs. 2,25,000;
- (v) No additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge;
- (vi) If compensatory or sumptuary allowances are attached to one or more of the posts, the Government servant shall draw such compensatory or sumptuary allowances as the Central Government may fix provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts.



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“Store Keeper” in various official orders issued by the respondent and that, from November 1995, the petitioner had been working as Store Keeper without any break or replacement.

10. In the counter affidavit filed by way of response to the OA, the respondent adopted a stand that the petitioner had not been appointed on regular basis as Store Keeper but had merely been asked to “look after” the duties of the post of Store Keeper.

11. The learned Tribunal has, by the impugned judgment dated 28 April 2014, dismissed the petitioner’s OA, reasoning thus:

“4. It is trite that merely because an employee is asked to look-after the duties of a higher post cannot claim the pay scale of the said higher post unless he is appointed or promoted to the said post as per the relevant rules. Further, for claiming pay scale of the higher post one has to establish that he possesses all the requisite qualifications for the said higher post and also that he discharges the functions of the said higher post on regular basis. Except contending that he was asked to look-after the charge of the post of Store Keeper, the applicant miserably failed to show any other valid reason to substantiate his claim.”

12. Mr. Srivastava points out that the learned Tribunal has not even obliquely adverted to the order by which the petitioner was asked to take over the charge of post of Store Keeper or the subsequent orders which had been issued by the respondent in which he has specifically been shown as Store Keeper. The plea of the respondent that the petitioner was only given look after charge of the post of Store Keeper has been accepted as true, with no documents to support the said assertion.



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13. In our considered opinion, the facts of the case *ex facie* call into application FR 49(iii) which envisages a situation in which a government service is formally appointed to hold charge of another post or posts, which are not in the same office or which, though in the same office, are not in the same cadre or line of promotion. Admittedly, the post of Store Keeper is neither in the same office as the post of Carpenter nor does it in the same cadre or line of promotion.

14. Though FR 49 (iii) uses the expression “formally appointed”, there is no specific indicia of such formal appointment to which the FR alludes. Suffice it to state that, as there is nothing to indicate that the petitioner was only appointed to hold the post of Store Keeper on look after or current duty charge basis, and as the petitioner continued to hold the post of the Store Keeper for a considerable period of time, *during which period the respondent inter alia, by order dated 28 September 2001, specifically noted that the petitioner was working as Store Keeper in the Science Branch*, we are inclined to treat the appointment of the petitioner as Store Keeper as, to all intents and purposes, a formal appointment.

15. We have, recently, dealt with a case in which an employee was asked to hold a post on current charge basis. The order in that case specifically stated that the appointment was only stop gap and that the employee would not be entitled to the wages of higher post. In such a situation, we have held that the case would be covered by FR 49(v), and the employee could not seek the pay of the higher post. As against this, in the present case, to reiterate, there is not even a single



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document which indicate that the petitioner's appointment as Store Keeper was only on current charge or look after charge basis.

16. The assertions of the petitioner to the contrary, as contained in his representation dated 29 August 2011 and his OA before the learned Tribunal, have not been specifically traversed. Though the respondent has taken a stand that the appointment of the petitioner as Store Keeper was on look after charge basis, no document in support of that stand is forthcoming.

17. We, therefore, are of the opinion that the learned Tribunal was in error in accepting the stand of the respondent as correct. Neither was there any specification, in the order appointing the petitioner as Store Keeper, to the effect that he would not be entitled to draw the pay of Store Keeper. In these circumstances, we are of the opinion that it would be unjust and unfair to deny the petitioner the pay of Store Keeper during which he held the said post.

18. The prayer clause in the OA filed by the petitioner before the learned Tribunal read thus:

“8 PRAYER

In view of the facts and circumstances of the case, this Hon'ble Tribunal may kindly be pleased to grant

A) Pay scale of ₹ 1400-2300 w.e.f. 02/11/1995 to 31/12/1995

B) Pay scale of ₹ 5000-150-8000 w.e.f 01/01/1996 to 31/12/2005

C) Pay scale of Rs 9300-34800 w.e.f



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01/01/2006 to till date.”

19. Mr. Singh does not dispute the fact that the pay-scales reflected in prays (a), (b) and (c) of the OA are indeed the pay-scales of Store Keeper during the periods indicated alongside the scales in the prayer clause.

20. Accordingly, the judgment dated 28 April 2014 passed by the learned Tribunal in OA 4275/2012 as well as order dated 19 September 2014 passed in RA 135/2014 are quashed and set aside.

21. The OA stands allowed in terms of prayers (a), (b) and (c) contained therein, as extracted *supra*.

22. Let the differential payment, if any, be made to the petitioner by the respondent within a period of eight weeks from today.

23. The writ petition also stands allowed to the aforesaid extent, with no orders as to costs.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 18, 2024

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Click here to check corrigendum, if any