

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1406 of 1998

New Delhi, this the 28th day of May, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL.)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

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Shri Dharam Bir
S/o Late Shri Khan Chand
R/o Varun Apartments
Plot No. 12, Sector-9,
Quarter No. A-1/30, Rohini,
Delhi-110 085.

..Applicant

By Advocate: Ms. Rasmeet Charya.

Versus

1. Delhi Fire Service
Headquarters,
Connaught Circus,
New Delhi.
2. Government of NCT of Delhi,
5, Sham Nath Marg, Delhi,
through its Chief Secretary.
3. Secretary (Services)
Government of National Capital Territory of
Delhi,
5, Sham Nath Marg, Delhi. ...Respondents

By Advocate: Shri Ram Kanwar.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl.)

This OA was filed by applicant seeking following reliefs:-

(i) To quash the impugned action of the respondents in denying benefit of promotion to the post of Assistant Divisional Officer with scale of pay attached thereto from 26.8.93 although he was considered for promotion but instead illegally, wrongfully and arbitrarily showing to be on current duty charge as Assistant Divisional Officer.

(ii) To hold that the applicant is entitled to

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the scale of the post of Assistant Divisional Officer from 26.8.93 and the revised pay scale according to the 5th Pay Commission Report together with arrears of pay and allowances till his superannuation on 31.3.98. The respondents should also be called upon to release the amount of arrears including arrears of gratuity and pension etc.

(iii) To call upon the respondents to release amount of pension etc. and the amount of Rs.1,10,958/- towards remaining amount of medical expenses with interest @ 18% per annum from the due date till the date of payment.

2. During the pendency of the OA the applicant has since expired, his legal heirs have been substituted who are pursuing the present OA.

3. From the perusal of the reliefs claimed as reproduced above, it is apparent that applicant has claimed multiple reliefs which is not allowed because of the Rule 10 of the CAT (Procedure) Rules. When confronting with this situation, the learned counsel for the applicant confined her arguments only with regard to the applicant's claim for higher pay for the post of Assistant Divisional Officer (hereinafter referred to as ADO) from 26.8.93. The learned counsel for the applicant did not press the other reliefs and she is at liberty to pursue the remedy for other reliefs regarding reimbursement of medical claim by taking appropriate steps, if so advised as per law.



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4. The grievance which now survives for adjudication is based on the facts that the applicant was working as ADO under the respondents - Delhi Fire Service. Vide order Exhibit Annexure P-I dated 26.8.93 the applicant was given promotion on Current Duty Charge basis with immediate effect. The order granting promotion reads as under:-

" Consequent upon promotion to the rank of Assistant Divisional Officer on current duty charge basis with immediate effect as communicated by the Director (P) vide O.O. No.F-5 (12)/CED (II)/86/Pt.File/309/19582-603 dated 25.8.93. The following officers are posted at Fire Stations shown against their names:

1. ADO Shri Tara Chand - C.C. Fire Station
2. ADO Shri Radhey Shyam - Nehru Place
3. ADO Shri Dharambir - Moti Nagar
4. ADO Shri Vijay Bahadur - Headquarters as Mobilizing Officer

This issues with the prior approval of Chief Fire Officer dated 25.8.93".

5. The applicant claims that the respondents department had adopted a practice by giving promotion on current duty charge basis despite the fact that the regular vacancies for the said posts are available.

6. The applicant further alleges that he had been performing the higher duties attached to the post of ADO till the date of his superannuation, i.e., 31.3.1998 but the claim of the applicant has not yet been decided so the respondents be directed to give benefit of promotion to the post of Assistant Divisional Officer with the scale of pay attached to the post.

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7. The respondents are contesting the OA. They have pleaded in the counter that the OA is not maintainable and is barred by limitation. However, respondents admit that the applicant was entrusted with the duty of Assistant Divisional Officer but he was entrusted these duties without any financial benefits since it was based on current duty charge.

8. The respondents further pleaded that as per the Recruitment Rules for the post of Assistant Divisional Officer the post can be filled up by promotion from STD through selection and promotion cannot be given on the basis of current duty charge.

9. We have heard the learned counsel for the parties and gone through the records of the case.

10. The short question in this case is to see whether the promotion given to the applicant was given on the current charge basis and without any financial benefits to the applicant or whether under the rules the applicant is entitled to the pay scale attached to the post of Assistant Divisional Officer. The relevant rules governing this situation is contained in FR 49.

11. FR 49 provides that 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. But where a Government servant is allowed to hold dual

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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. Since FR 49 was subject matter of various litigations, the Government issued guidelines and the relevant guidelines which have been noted by Swamy in his compilation in his FRSR Part-I, which are as under:-

" (i) When an officer is required to discharge all the duties of the other post including the statutory functions, e.g., exercise of power derived from Acts of Parliament such as Income Tax Act or the Rules, Regulations, By-Laws made under various Articles of Constitution such as F.Rs., CCS (CCA) Rules, CSRs, DFPRs., etc., then steps should be taken to process the case for getting the approval of the competent authority and formal orders appointing the officer to the additional post should be issued. On appointment, the officer should be allowed the additional remuneration as indicated in FR 49.

(ii) Where an officer is required only to attend to the usual routine day-to-day work of non-statutory nature attached to the post, an office order may be issued clearly stating that the officer will be performing only the routine day-to-day duties of non-statutory nature and that he would not be entitled to any additional remuneration. The office order should also specify what duties he would be discharging or what duties he would not be discharging".

12. According to the guidelines as reproduced above if the officer is required to discharge all the duties of other posts including the statutory functions, then steps should be taken to process the case for getting the approval of the competent authority and formal orders appointing the officer to the post be issued, only then he would be entitled to additional remuneration.

13. Now on going through the OA we find that the applicant has nowhere alleged that if he was working or performing any duty attached to the post of Additional Divisional Officer or any statutory function attached to

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the post was performed. So in the absence of that it is to be presumed that it was a routine duty and no statutory function was attached to the post of ADO. The order granting promotion which is at Annexure P-I also shows that the applicant had been given the rank of ADO on the basis of current duty charge basis which means whatever current duty charge he was holding, he was given additional charge of ADO on current duty charge basis and he was posted at the same station and as such he is not entitled for any additional remuneration.

14. Hence in these circumstances, we find that the OA is without any merits and the same is dismissed. No costs.

(S.A.T. Rizvi)
Member (A)

(Kuldip Singh)
Member (J)

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