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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2288/1998

New Delhi this the 8th day of February, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI M. P SINGH, MEMBER (A)

Kasturi Lal,
S/o Shri Lakhmi Dass,
R/o 52/14, Ashok Nagar,
P.O. Tilak Nagar,
New Delhi-110066.

... Applicant

(By Advocate Shri Surinder Singh)

-Versus-

1. Union of India through
Director General of Works,
C.P.W.D.
Nirman Bhavan,
New Delhi-110018

2. The Superintending Engineer (E)
Delhi Central Electrical Circle VIII
C.P.W.D., I.P.Bhawan,
New Delhi-110002.

... Respondents

(None for the respondents)

O R D E R (ORAL)

Shri M.P.Singh, Member (A) :

By the present application, the applicant has prayed to direct the respondents to pay him pay and allowances in the scale of Executive Engineer (E) from 14.3.1997 to 1.9.1998.

2. The facts leading to th filing of the present O.A. are as follows. The applicant at the relevant time was serving as Assistant Surveyor of Works (E) and while so serving, he was issued a letter 14.3.1997 by the Superintending Engineer (E), second respondent herein directing the applicant to hold the

complete charge of Executive Engineer (HQ) with effect from 14.3.1997 along with his duties as Assistant Surveyor of Works (E). One shri Subhash Kukreja who was performing the functions of Executive Engineer (HQ) was relieved and the applicant took over the charge of Executive Engineer (HQ) with effect from 14.3.1997. As the applicant was not paid pay and allowances for the post of Executive Engineer (HQ) during the period he worked as such, he made a representation to the Chief Engineer (E) in June 1997 and put forth his claim to pay and allowances in higher scale as admissible to him under Fundamental Rule 49 (i). Aforesaid request of the applicant was rejected as not being admissible under the rules. In the circumstances, he had approached the Tribunal by filing the present OA under Section 19 of the Administrative Tribunals Act 1985.

3. The respondents in their counter reply have stated that one Shri C.M.Rawal, Executive Engineer (E) looked after the duties of Surveyor of Works till his death in November 1997. Thereafter Superintending Engineer (E) looked after the work of Surveyor till the posting of a regular Executive Engineer (HQ) cum Surveyor of Works on 3.12.1998. They have also contended that the post of Executive Engineer (HQ) is a Group- A post and the Superintending Engineer (E) is not competent to make appointment to the said post. Since the appointment has not been made with the approval of the competent authority, the benefit of FR 49 (i) is not admissible to the applicant.

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4. We have heard Shri Surinder Singh, learned counsel for the applicant and perused the material on record. None is present on behalf of the respondents.

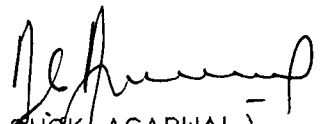
5. The contention of the respondents that the work of Assistant Surveyor of Works has been looked after by the Superintending Engineer himself is not correct on two counts; one C.P.W.D. Manual Volume I (1986) Para 6 provides that the Superintending Engineers are assisted in the planning work by one or more Surveyors of works. Secondly the Superintending Engineer himself has certified and written to the Chief Engineer that the applicant has been performing all the duties of Executive Engineer (HQ) in addition to his normal duties of Assistant Surveyor of Works (E) and had requested him to sanction either the special pay or the honorarium to the applicant. As regards the other contention of the respondents that Superintending Engineer was not competent to make appointment to the said post, the letter issued on 14.3.1997 does not indicate whether or not the approval of the competent authority was obtained. In any case, it was for the respondents to obtain such approval and not for the applicant to obtain approval for his appointment to a higher post.

6. In the facts and circumstances of the case, it is clear that the applicant has performed the duties of Executive Engineer (HQ) in addition to his own duties which is the requirement under Fundamental

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Rule 49(i) for payment of the salary of the higher post. In view of this, we direct the respondents to make the payment of difference of salary payable in the post of Executive Engineer and the salary received by the applicant as Assistant Surveyor of Works during the period from 14.3.1997 to 1.9.1998 in accordance with FR 49(i). Aforesaid payment will carry interest @ 12% per annum from 1.9.1998 till the payment is made.

7. The OA is accordingly disposed of. There shall be no order as to costs.


(ASHOK AGARWAL)
CHAIRMAN


(M. P. SINGH)
MEMBER(A)