

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 1450/1995

New Delhi, this 22nd day of May, 1996

Hon'ble Shri B.K. Singh, Member (A)
Hon'ble Dr. A.Vedavalli, Member (J)

J.L. Kaul
56, Anupam Apartments
MB Road, New Delhi .. Applicant

By Shri J.K. Bali, Advocate

Vs.

The Chairman
Railway Board
Rail Bhavan, New Delhi .. Respondent
By Shri P.H. Ramchandani, Sr.
counsel with Shri P.S. Mehandru, Advocate

ORDER (oral)

Hon'ble Shri B.K. Singh

This OA has been filed challenging the order dated 22.4.91 (Annexure A-2). It is admitted that the applicant had filed another OA 1026/93 before the Calcutta Bench of the Tribunal against the rejection of his representation dated 27.3.92 to grant him the grade pay of the post of General Manager w.e.f. 2.4.91 the date from which he was holding the current Calcutta. duties of the post of GM of Metro Railway. The judgement was pronounced in that OA on 5.1.94, in which the applicant was asked to make a representation to the competent authority who was directed to pass a speaking order within 3 months.

The respondent by letter dated 21.8.95 informed the applicant that he is entitled to the grade pay of GM only from 11.3.92 since the Appointments Committee of the Cabinet (ACC) approved his appointment as such from 11.3.92.



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The order dated 22.4.91 says that "Shri J.L. Kaul should be transferred to Metro, Railway, Calcutta and detailed to look after the current duties of the post of General Manager, Metro Railway, until further orders...". Memorandum dated 4.6.91 states that the applicant relinquished the duties of the post of Adviser (Vigilance), Rly. Board w.e.f. the AN of 23.4.91. The order dated 24.4.91 makes it clear that "Shri Kaul is detailed to look after current duties of the post of General Manager, Metro Railway, Calcutta w.e.f. 24.4.91".

2. The relief claimed by the applicant is regarding the grade pay of the post of GM i.e. Rs.7300-8000 w.e.f. 25.4.91.

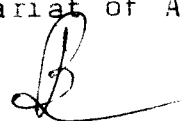
3. On notice, the respondents filed the reply contesting the application and grant of the relief prayed for. Heard the learned counsel for the parties.

4. FR 49 states that no additional pay shall be admissible to a government servant who is appointed to hold current charge of the duties of another post or posts. Govt. of India guidelines also make it clear that he will not be allowed to draw pay of the higher post and therefore no additional remuneration will be payable under FR 49, sub-clause (V). The crucial question is whether a person while holding current duty charge of a post independently without combining it with any other post can claim grade pay of the higher post. If a person is denied higher pay for combining the current duties of the higher post with his substantive post it is pretty doubtful that he can be allowed the grade pay

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of the higher post if he is asked to function independently and he perform only the current duties of that post. It is inconceivable that a person who is asked to hold current duties of the higher post/superior post independently will be eligible to draw pay of that grade because under FR 49 he is not eligible to draw the pay scale of the higher post while combining it with another post. The applicant was asked to hold current charge of the post till final arrangement was made. Such an order is generally made in the exigencies of public service. This may be a practice with the Ministry of Railways and Railway Board which is a state unto itself where a person can be shifted to hold current duty charge of a higher post independently. By order dated 22.4.91, the applicant was transferred to Metro Railway and detailed to look after the current duties of the post of GM. This order is not under challenge before this Tribunal. The applicant accepted the transfer and also the arrangement made by the competent authority and therefore it is presumed that he acquiesced in such an arrangement.

5. The learned counsel for the applicant cited the case of Shri Raj Kumar, which was also cited before the DB presided over by the Hon'ble Acting Chairman Shri N.V.Krishnan in the judgement 1994(27) ATC 321. It clearly states that 'approval of the ACC to the appointment of Shri Raj Kumar as GM or equivalent post was conveyed in the letter dated 23.4.92 by the Secretariat of ACC. It was,

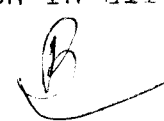


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however, directed that, as far as selection of Member(Engg.) was concerned, which post would fall vacant on 31.1.92, the selection should be made from out of the five officers who were senior to Shri Raj Kumar. This direction of the ACC was, obviously, improper and hence, it was taken up for reconsideration by the Chairman, Railway Board by his letter dated 4.5.92 through the 1stt. Officer who is ex-officio Secretary to ACC. Finally, the ACC by its letter dated 29.12.92 reconsidered this decision and approved the appointment of Shri Raj Kumar as Member(Engg.) w.e.f. 1.1.93. Thus, it is clear from this that the ACC revised its decision on the basis of the recommendations made by the Chairman, Railway Board.

6. The learned counsel for the applicant relied on the judgement of Smt. P. Grover Vs. State of Haryana 1983 (2) SLR 734. But here the facts are distinguishable. It is neither acting nor officiating charge but the order is made to hold only the current duties of the post. It is true that this concept of holding current duty charge may be elusive as per FR/SR but it is admitted that this practice is prevalent in Railway Board. In other departments/Ministries, central as well as state, a person is allowed to combine the duties of higher post with his substantive post but he continues to draw the grade pay of the substantive post and no additional remuneration is payable under FR 49(V). Therefore, the concept of combining the duties of two posts is common in all other


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departments/Ministries minus the Railways, which is a State unto itself, but in service jurisprudence and also as per the rules of transaction of business in Government of India, the practice is that a junior officer can be entrusted with current duty charge of higher post till formal appointment is made to that post and for this no additional remuneration is admissible to him. The learned counsel for the applicant also referred to the judgement of Gujarat High Court 1989(1) 3LRJ 144 where the appointment was made to a particular post not regularly but dehors the rules and he was allowed the pay scale of the higher post. Here the word is 'appointment' whereas in the case of applicant he was detailed to hold current duties of the post of GM. Therefore, the ratio of this judgement is not applicable to the instant case.

7. As regards the judgement of Shri S. Ravi Vs. Chairman, Railway Board, as already stated above, the Tribunal has categorically recorded on the basis of the averments made in the counter reply that the grade pay was not given to Shri Raj Kumar as it was pointed out by the A.C. that there was no post vacant and therefore he could not be promoted from 23.4.92. On the recommendation of the Chairman, Railway Board through the Estt. Officer the date was revised to 1.1.93.


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8. While arguing, Shri Ramchandani, Senior Counsel, distinguished between the meaning of holding current duty charge and appointment as made out in case of A.M. Harideo Vs. State of Mysore 1968-SLR 369. The holding of current duty means that a person has not been regularly appointed and has only been asked to perform the routine functions attached to that post. The current duties, according to him, are performing of the routine duties of that post on day-to-day basis. This arrangement is functional and the current duty charge is for performance of routine duties of the higher post. He does not become the holder of that post unless he is regularly appointed to that post.

9. The various other judgements relied upon by the ld. counsel for the applicant i.e. State of West Bengal Vs. Aghore Nath Dey and K.C. Joshi (supra) relate to seniority matters. As per existing instructions, it should be ensured that the date of effect of approval of ACC in each case will be prospective unless otherwise specifically stated in the order of the Committee communicated to the Ministry/Department concerned. In this connection, Shri Ramchandani, learned senior counsel, drew our attention to the OM No. 8(15)-ED/84 (ACC) dated 12.12.84 issued by the ACC on the subject of date of effect of appointments within the purview of the ACC, wherein it has been specifically mentioned that "It may be noted that

the ACC do not view with favour appointments with retrospective effect, as per existing instructions. It is, however, reiterated that it should be ensured that the date of effect of approval of the ACC in any proposal will be prospective only unless otherwise specifically stated in the orders of the Committee communicated to the Ministries/Departments in any specific case". Admittedly, the ACC has not indicated in its order dated 11.3.92 that the applicant would hold the higher post with retrospective effect i.e. 2.4.91. ACC is the only competent authority to pass any such order. On this point alone, the Tribunal can not pass any order for allowing grade pay to the applicant in the pay scale of Rs.7300-8000 w.e.f. an earlier date, i.e. 2.4.91. The ACC has finally approved his appointment w.e.f. 11.3.92 only and he is entitled to that grade pay from that date. This being so, we are unable to interfere with the order passed by the competent authority.

10. The learned counsel for the applicant finally relied on the judgement in case of G.S. Kang Vs. UOI in OA 9/1988 decided on 7.12.1990. In this case, the applicant was not allowed any increment in the unrevised scale of Rs.3000-3500 so long as his seniors were ^{not} appointed to that grade. The respondents have not produced any documentary

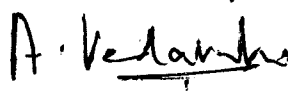


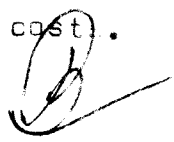
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evidence to show that the post of OSD in the scale of Rs.3000-3500 was downgraded to that in the fixed scale of Rs.3000 so long as it is held by the applicant. The stand of the respondents was that he was paid in the scale of Rs.3000-3500 which was subsequently revised to Rs.7300-8000. In this particular case, the applicant was performing all the duties of the post of OSD in both the pre-revised and revised scales and was not holding current duty charge. He was entitled to draw pay for performing full duty of that post as was held by the Tribunal. The facts of that case are totally distinguishable from the facts of the present case and therefore the ratio of that judgement will not be applicable to the present case. The applicant in the present case, as stated earlier, was only detailed to hold current duty of the post of GM, i.e. he shall perform the statutory functions of that post.

11. Thus, taking a synoptic view of the facts and circumstances of the present case, we hold that that the application fails and is therefore dismissed, but without any order as to cost.


(Dr. A. Vedavalli)
Member(J)


(B. K. Singh)
Member(A)

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