

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA NO.760/96

(A)

HON. SHRI R.K. AHOOJA, MEMBER 'A'

NEW DELHI, THIS 20 DAY OF JANUARY, 1997

SHRI MANGAL SINGH
S/o Lt. Shri Budhan Ram
House No.264/1
Gali No.12
Than Singh Nagar
NEW DELHI

...APPLICANT

(By Advocate - SHRI B.S. OBEROI)

VERSUS

1. Union of India, through
Secretary
Ministry of Urban Development
Nirman Bhawan, NEW DELHI.
2. Director General of Works
Central Public Works Department
Government of India
Nirman Bhawan, NEW DELHI.
3. Project Manager 'C.E.'
P.W.D., M.S.D. Building
I.P. Estate, NEW DELHI - 2.

..RESPONDENTS

(By Advocate - SHRI B. LALL)

ORDER

The applicant while posted in the office of Project Manager 'CE', Yamuna Bridge Project, P.W.D., Delhi Administration, as a Section Officer, was asked to take over the charge of the post of Finance Officer 'F.O.' on 31.3.1994 pending alternate arrangements. However, no alternate arrangements were made by the respondents till the retirement of the applicant on 31.12.1994.

contd. .. 2/-

(5)

Before superannuation, he was again asked to hand over the charge to the Finance Officer. The applicant made a representation to the respondents for refixation of his pay or grant of special pay to him as per FR 49 for holding additional charge of the post of F.O.; but the request was turned down. He now claims refixation of pay in terms of FR 49 w.e.f. 1.4.1994 along with payment of arrears and also refixation of his pension on that basis. The respondents deny the claim and point out that the applicant was never formally appointed to hold the charge of the post of F.O. nor did his continuation after a period of three months was with the concurrence of the Finance Ministry as required under FR.

2. I have heard the counsel on both sides. Shri B.S. Oheroi, ld. counsel for the applicant, submitted that even though there was no formal order of appointment of the applicant as F.O. it could clearly be seen from the office order dated 31.3.1994 (A-4) that Shri B.R. Verma, Finance Officer, was asked attending the age of superannuation to hand over his charge to the applicant Shri Mangal Singh. Vide endorsement No.6 of that office order, the applicant was instructed to take over the charge from the F.O. till further orders. He argued that the applicant was in no position to refuse to obey these instructions and no choice was afforded to him. Secondly, whether he was designated in the office orders as Section Officer or Finance Officer, the net effect was the same, in that he was directed to take over the charge of the post of Finance Officer. The ld. counsel also pointed out that there was no mention in the aforesaid office order that the applicant was to hold merely the current charge or the full charge of the post and therefore the

OK

(6)

assumption would be that he had to hold full charge. The ld. counsel also submitted that the work of a Finance Officer is arduous and involves additional responsibilities and the applicant had to undertake this burden for nearly eight months. He also urged that in case there was a requirement to obtain the concurrence of Finance Ministry as per FR-49, then this duty devolved upon the respondents when they asked the applicant to continue as F.O. and not upon the applicant.

3. The ld. counsel for the respondents, Shri Lall, in response pointed out that a mere instruction to take over charge from a superannuating officer did not imply a formal appointment to that post. He also submitted that the applicant did not make any representation for the additional pay till the middle of November, as per A-6, when he was almost due to retire on superannuation. The applicant could not have been unaware of the provisions of FR 49 and the requirement of obtaining the concurrence of the Finance Ministry and his sleeping over for most part showed that his representation was merely an afterthought.

4. I have considered the arguments and pleadings on both sides and have also gone through the records carefully. On the facts of the case, I find little merit in the case of the applicant. The order at A-4 is an order in respect of superannuation of Shri B.R. Verma and not a formal order appointing the applicant as F.O. in his place. The language of the endorsement No.6 directing the applicant to take over charge from the F.O. till further orders indicates only a stop gap arrangement. In this endorsement, as well as in the endorsement

De

7

regarding taking over charge by the regular F.O., the applicant is all along designated and shown as Section Officer. The requirements of FR 49 relating to combination of appointments are, as per sub-rule 3(i), that the government servant should be formally appointed to hold the charge of another post, and secondly that if he is to hold the additional charge for a period exceeding three months, concurrence of Finance Minister shall be obtained for payment of additional pay beyond three months. It is clear that neither of these two requirements have been fulfilled in the case of the applicant. The ld. counsel for the applicant in support of his case relied on the orders of this Tribunal in OA NO.167/94 SHRI PROVIN BORTHAKUR VS. UOI & ORS. 1996(3)(CAT) AISLJ 326. The aforesaid case is however based on different facts inasmuch as the ad hoc appointment continued for many years and was followed by a regular appointment. There was also an order appointing the applicant in that case to the higher post and to take the charge of the recruitment. The present applicant cannot therefore draw sustenance in his pleadings from that case of PROVIN BORTHAKUR (Supra).

5. In the circumstances, since the case of the applicant did not fulfill the requirement of FR 49, sub-rule 3(i), the respondents cannot be said to have acted wrongly in rejecting the belated representation. Accordingly, I dismiss the application. No costs.

R.K. Ahuja
(R.K. AHUJA)
MEMBER (A)

/avi/