

15.

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

OA-1244/97

New Delhi this the 18th day of December, 1998.

Hon'ble Shri T.N. Bhat, Member(J)  
Hon'ble Shri S.P. Biswas, Member(A)

Late Sh. Y.R. Agrawal,  
through

1. Smt. Vijay Aggarwal  
2. Sh. Atmanand  
3. Depti @ Meeti Singh  
R/o 95-A, Narayan Nagar,  
Laxmi Nagar Extension,  
Delhi-92. .... Applicant

(through Ms. Nidhi Bisaria, advocate)

versus

1. Union of India  
through Secretary,  
Ministry of Finance,  
New Delhi.  
  
2. Comptroller & Auditor General  
of India, 10, Bahadur Shah Zafar  
Marg, New Delhi-2.  
  
3. Principal Director of Audit  
Economic & Service Ministries,  
AGCR Building,  
New Delhi-2. .... Respondents

(through Shri K.R. Sachdeva, advocate)

ORDER

Hon'ble Shri S.P. Biswas, Member(A)

The applicant, a Deputy Director in the grade of Rs.3000-4500, under the respondents, is seeking relief in terms of issuance of directions to the respondents to pay salary and allowances of the grade of Rs.3700-5000 for the period from 07.02.94 to 30.11.94 for having carried out the duties and responsibilities of the higher post in addition to his own.

AB

2. Admittedly, the applicant was entrusted with higher responsibilities pertaining to the post of Director (Inspection Civil-I) which is in the grade of Rs. 3700-5000 in addition to his own duties and responsibilities and that the applicant discharged these satisfactorily. The respondents admit that the applicant was entrusted with the additional charge during the absence of the incumbent to the post of Director (Administration & Inspection). The difference of salary for working in a higher post has been denied on the basis that the applicant was asked to look after only a part of the work relating to Administration & Inspection-I.

3. The respondents have submitted that the grant of additional pay for holding charge of another post is governed by the provisions contained in FR 49 which clearly mentions that no additional pay shall be admissible to a Government servant who is appointed to hold current duty charge of another post. The applicant was not formally appointed to a higher post and as such the conditions under FR 49 and the extant instructions are not fulfilled. The application is, therefore, misconceived, the learned counsel for the respondents would submit.

4. The order under which the applicant was asked to do the additional work reads as under:-

"Pr. DA has ordered that during the absence of Shri Bahri for the above period, his charge will be looked after by the following group Officers:

- i) Shri Ram Nath DD(Works) - Admn. Wing
- ii) Shri Y.R. Agrawal DD(Insprn. IV) - Insp. Civil-I Wing

(R.L. Sharma)  
Secy. to Pr.DA"

5. The applicant appears to have made several representations for providing him the relief in terms of salary and allowances of the grade of Rs.3700-5000 from 7.2.94 to 30.11.94 but without any result. The applicant has cited the case of one Shri M.M. Sharma who had performed higher duties for a period of three months and was granted pay and allowances for performing the ~~that~~ duties of higher post for ~~a~~ period. He has, therefore, alleged discriminatory treatment.

6. The issues regarding legality of additional remuneration for having discharged higher responsibilities have been recently adjudicated by the Apex Court in the case of Selvaraj Vs. Island of Port Blair & Ors. (JT 1998(4) SC 500). That was the case where a Primary School Teacher was asked to look after the duties of Secretary (Scouts). Appellant therein was posted on officiating basis. The Apex Court held that on principle of quantum meruit, the said Primary School Teacher should have been paid higher scale during the period he actually worked in that capacity. The only difference is that the applicant had carried out the responsibilities of higher post only by part i.e. portion pertaining to Inspection - Civil-1.

7. We find that the decision in CA-1737/89 is applicable to the facts and circumstances of the case. In that CA, the Apex Court was examining the ratio arrived at by the New Bombay Bench of this Tribunal in OA-294/86 cited in the case of R. Srinivasan Vs. U.O.I. & Ors. (1994(1) ATJ Vol.16 Page 232). In that case (OA-294/86), the applicants was shouldering higher

responsibilities of officer of Grade-II but emoluments for the higher post were denied. It was observed that inasmuch as the applicants have not given in writing that they would not claim any extra remuneration, they would be entitled to such payments as per rules. That judgement has become final since the appeal filed by the respondents against the said judgement in the aforesaid C.A. was dismissed by the Hon'ble Supreme Court by an order dated 02.08.1991. A similar view has been taken by the Hon'ble Supreme Court in the case of Secretary-cum-Chief Engineer Vs. Hari Om Sharma (1998(2) SC SLJ 39). Respondents would then say that the principles enunciated in aforesaid two cases would be applicable when responsibilities of higher post was held in full.

8. We also find that it is not necessary that the issues raised herein have to be invariably dealt under FR 49 which deals with payment of salary/wages in situations of "combination of appointments". It is not in dispute that the main issue involved herein is a matter concerning "additions to pay" and problems of "additions to pay" can also be considered under FR 46 (b). Provisions under rule indicate that:-

"b) Honoraria - The Central Government may grant or permit a Government servant to receive an honorarium as remuneration for work performed which is occasional or intermittent in character and either so laborious or of such special merit as to justify a special reward. Except when special reasons which should be recorded in writing, exist for a departure from this provision, sanction to the grant of acceptance of an honorarium should not be given unless the work has been undertaken with the prior consent of the Central Government and its amount has been settled in advance."

9. It is true that rules do not permit payment of honorarium for temporary increase in work loaded in the existing capacity/position of an official. Nor a Government servant can legally claim honorarium when he performs duties of another sanctioned post (in the same rank) in addition to his own duties attached to his post. But the rules are silent and do not prohibit sanction of suitable amount of honorarium when the additional work had meant discharging responsibilities of a higher post, partially or fully. It is thus obvious that respondents could have considered applicant's prayer under FR 46(b) and provided atleast some token relief in appreciation of applicant having carried out additional responsibilities. It is not a case of the respondents that the applicant did not work satisfactorily. Apparently, the applicant's case has been disposed of in a mechanical and casual manner. The law laid down by the Hon'ble Supreme Court points to the need for providing additional remuneration to a junior official when he/she shoulders additional responsibilities of the higher grade/post. The manner in which such remuneration could be provided is a matter for the appropriate executive authorities to decide. In our considered view, the applicant's case deserves to be considered either in terms of the three cases decided by the Apex Court as aforesaid or by taking recourse to the provisions under payment of honorarium under FR 46(b).

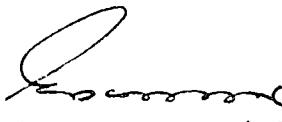
10. In the background of aforesaid

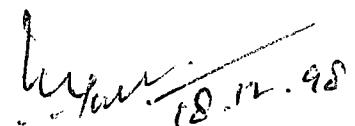
d  
A

discussions, the O.A. is partly allowed with the following directions:-

The respondents shall consider making payment of officiating allowances (difference of pay between the salary attached to the post of Dy. Director and Director) or justifiable amount of honorarium to the applicant for the period he had actually performed duties and responsibilities of Director within a period of three months from the date of receipt of a copy of this order.

No costs.

  
(S.P. Bawas)  
Member(A)

  
T.N. Bhat  
Member(J)

/vv/