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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 1734/89

New Delhi this the 25th day of April, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

Shri Trilok Singh Rawat,
S/o Shri Bachan Singh Rawat,
R/o P-Block, Gali No. 6,
House No. 78, Mangolpuri,
New Delhi.

..Petitioner.

By Advocate Shri T.C. Aggarwal.

Versus

1. Director General,
Doordarshan, Mandi House,
New Delhi.

2. Director,
Doordarshan Kendra,
Parliament Street,
New Delhi.

..Respondents.

By Advocate Shri M.L. Verma.

ORDER(ORAL)

Shri Justice V.S. Malimath.

The petitioner was holding the post of Floor Assistant in Doordarshan at Jullundhar. It is his case that he was asked to look after the work of Floor Manager from 11.10.1981. When he was transferred on his own request on 29.6.1987, he ceased to discharge the function of Floor Manager. In this application, he has prayed for a direction to the respondents to pay to the petitioner the pay of the post of Floor Manager for the period from 11.10.1981 to 29.6.1987 when he discharged the duties and functions of the higher post of Floor Manager.

2. The petitioner has relied upon FR 49(i) whereas the respondents have invoked FR 49(v) for denying the relief to the petitioner. They read as follows:

"FR 49. The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government. In such cases, his pay is regulated as follows:

- (i) when 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, unless the competent authority reduces his officiating pay under Rule 35; but no additional pay, / however, be allowed for performing the duties of a lower post:
- (ii) to (iv). xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
- (v) no additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge."

Thus, the question for examination is as to whether the petitioner has satisfied the conditions specified in FR 49(i) or the conditions specified in FR 49 (v).

3. It was urged by the learned counsel for the respondents that clause (i) of FR 49 is not satisfied firstly for the reason that there is no formal order appointing the petitioner as Floor Manager and, secondly, on the ground that he did not have eligibility for promotion to the post of Floor Manager and that he was also not within the zone of consideration for promotion to the post of Floor Manager. It is not and cannot be disputed that the petitioner was not regularly promoted or appointed to the post

of Floor Manager. That is not the claim of the petitioner also. His claim is only that he was formally appointed to hold full charge of the duties of a higher post of Floor Manager and he had discharged the duties and functions of a higher post whereas he had been paid the emoluments of the post in the feeder cadre of Floor Assistants. In support of the claim of the petitioner, he has relied upon the office note dated 11.10.1983 produced as Annexure AA-2 of the Assistant Station Director, Doordarshan Kendra, Jallandhar, which reads:

"As we have only one regular Floor Manager and six (6) posts are lying vacant, the following Floor Assistants are asked to look after the job of Floor Manager with immediate effect till further orders:

1. Shri Harish Kapur.
2. Shri Tara Chand.
3. Shri T.S. Rawat.
4. Shri S.G. Kulkarni.
5. Shri Ajit Srivastava.

Sd/-

Assistant Station
Director, for Director"

It was pointed out by Shri Verma that this is only an office note and not a formal order of appointment. He appears to be right. The petitioner has relied upon the recommendations made by the Deputy Director (Programme) dated 5/8th June, 1987 to the Director General, produced as Annexure AA-3 on the representations of the Floor Assistants including the petitioner. The relevant paragraphs 2 and 3 of the letter dated 5/8.6.1987 read as follows:

"In this connection, a reference is invited to this office earlier letter of even number dated 17.11.86 and 16.12.86. It is brought to the kind notice of the Directorate that the decision of Directorate or clarification sought for therein has not been communicated so far. In the meanwhile, the above floor Assistants who have been actually performing the duties of Floor Managers at this Kendra for a long period without any additional remuneration or compensation, have now represented that they may be considered for ad hoc promotion.

Actually, out of the sanctioned strength of six Floor Managers, only one is filled and the remaining five are lying vacant for a number of years. As considerable difficulty was being experienced in the absence of Floor Managers, their duties were assigned to the above senior Floor Assistants, so as to avoid any dislocation of the day to day working in the important area of programme activity. Presumably, recruitment of Floor Managers is linked up with the case of merger of Floor Managers with those of trexes for which the recruitment was required to be done by the Station Director, All-India Radio, Jullandhar through Staff Selection Commission. However, the vacancies of Floor Managers at this Kendra have not been filled up as yet and the reasons for the delay are not known to this Kendra. Since the work of this Kendra suffers considerably for want of Floor Managers especially, when the programme activities have been increasing manifold, it is requested that Directorate may kindly agree to the request of the Floor Assistants for ad hoc promotion as Floor Managers, pending nomination of candidates by Staff Selection. This would provide a great incentive to the above Staff who have been discharging higher responsibilities without any compensation".

The respondents have not stated that this is not a true and genuine communication nor have they taken the stand that the statement made therein by the Deputy Director (Programme) about the facts ~~stated~~ is not accurate. It is clearly stated by the Deputy Director that the work in the Kendra has ~~been~~ increased and as they do not have regularly appointed Floor Managers, the petitioner and other Floor Assistants have been asked to look after the duties and functions of Floor Manager in addition to their own duties as Floor Assistants. This position ~~was~~ continued till 29.6.1987 so far as the petitioner is concerned.

There is no material to indicate that this arrangement was terminated on any earlier date. There is, therefore, satisfactory material to show that in accordance with the decision contained in the office note dated 11.10.1983, the petitioner was asked to discharge the functions of Floor Manager in addition to his own duties as Floor Assistant. As there is no written communication to the petitioner in this behalf for the period from 11.10.1981 to 10.10.1983, we are not inclined to accept the case of the petitioner in respect of the said period. So far as the period from 11.10.1983 to 29.6.1987 is concerned, we are satisfied on the materials placed before us that in accordance with the orders of the superior authority, the petitioner had discharged the functions of the post of Floor Manager in addition to the duties of the Floor Assistant. It is not possible in the context to accept the assertion of the respondents in the reply that the petitioner was only asked to look after the current duties of the Floor Manager in addition to the duties of Floor Assistant. That is clearly inconsistent with what is stated in the office note and the communication of the Deputy Director dated 11.10.1983. The counsel for the respondents, however, maintained that as there is no formal order, clause (i) of FR 49 is not attracted. From the materials placed before us, it is obvious that though there is no formal order as such, the office note is sufficient to indicate that the competent authority did ask the petitioner to discharge the functions of Floor Manager in addition to the duties of Floor Assistant. If the competent authority did not issue a formal order ✓ as he was expected to do so, the respondents cannot

take advantage of their own lapse for denying the
emoluments /which he is entitled to under FR 49(i).
We are satisfied that the conditions specified in
Rule 49(i) to the extent indicated above are duly
satisfied. There is, however, a stipulation in Rule
49(i), namely, to reduce the officiating pay invoking
Rule 35. Rule 35 can be invoked in all cases where
no regular appointment or promotion is made. In
the present case, we are satisfied that there was
no regular appointment or promotion to the post
of Floor Manager. We are also inclined to accept
the statement that the petitioner was not eligible
at that time and was also not within the zone of
consideration for promotion and that the procedure
for regular promotion was also not followed. In
this background, we are satisfied that the competent
authority can exercise power under Rule 35 to reduce
the officiating pay of the petitioner even though
he was discharging the functions of Floor Manager
between 11.10.1983 and 29.6.1987. There are Government
orders to the extent to which the reduction should
take place and also the circumstances when such
steps should be taken. As the competent authority
has not applied its mind in this behalf, it is but
proper that we should leave this matter for the
decision of the competent authority.

4. For the reasons stated above, this petition
is allowed and the respondents are directed to pass
an order on the basis that FR 49(i) is attracted
to this case and that the petitioner has become
entitled to higher emoluments, he having discharged
the duties and functions of the post of Floor Manager
in addition to the duties of Floor Assistant for

the period from 11.10.1983 to 29.6.1987. The Competent Authority shall under Rule 35 fix the pay of the petitioner which he would be entitled to receive, for the said period. In the light of the decision to be taken by the competent authority, the arrears due to the petitioner shall be worked out and paid to him with utmost expedition.

5. These orders shall be carried out within a period of four months from the date of receipt of a copy of this order. No costs.

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(P.T. Thiruvengadam)
Member(A)

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(V.S. Malimath)
Chairman

