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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. 2223/1989. DATE OF DECISION: Sept. 19, 1990.

G.L. Garg Applicant
(In person)

V/s.

The Comptroller and
Auditor General of India
and Others. Respondents.

Shri M.L. Verma Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their lordships wish to see the fair copy of the judgment? No.
4. To be circulated to all Benches of the Tribunal? No.

Dee
(J.P. SHARMA)
Member (J)

Ver
(P.C. JAIN)
Member (A)

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(Judgment of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A)).

Judgment

This application under Section 19 of the
Administrative Tribunals Act, 1985 seeks:

- (1) a direction to respondent No.1 viz., the Comptroller and Auditor General of India (C&AG) to issue formal orders of appointment temporarily to the post of Senior Deputy Accountant General (Administration) for the period 1.7.87 to 22.9.87 under F.R. 49(i) and
- (2) that the applicant be allowed special pay of Rs.400/- per month as admissible to the Sr. Deputy Accountant General (Administration) instead of Rs.200/- per month for the period 3.8.1987 to 22.9.1987.

2. The relevant facts, in brief, are as below: -

The applicant was working as DAG (Accounts) in the scale of Rs.3,000 - 4500 in the office of the AG (Accounts and Entitlement) I, Madhya Pradesh, Gwalior. One Shri Niranjan Pant, who was working as Senior DAG (Administration) in the scale of Rs.3700-5000, was deputed for a training abroad for a period of four months. Respondent No.2 viz., the AG (Accounts & Entitlement) I, Madhya Pradesh, vide his order dated 29.6.1987 (Annexure A-3) directed Shri Niranjan Pant, Senior DAG (Administration) to hand over charge to the applicant pending receipt of instructions from C&AG's office, after receipt of which, action was to be taken

accordingly. The applicant took over charge from Shri Pant on 30th June, 1987 (A.N.). The C&AG decided, vide order dated 22.9.87 (Annexure A-6) that the post of Senior DAG (Administration) which had fallen vacant due to proceeding of Shri Niranjan Pant for training abroad, will be down-graded to that of DAG (Administration) and one Shri O.P. Patniwal, A.O. was to be entrusted with the charge of DAG (Administration) till 31.10.1987 or the date by which Shri Pant comes back from training abroad. It is also stated in this order that the above arrangement was purely temporary and on 'ad hoc' basis and that the post of Senior DAG (Administration) will stand down-graded to that of DAG (Admn.) as long as Shri Patniwal holds the same.

3. Office Order dated 9.7.87 was issued by the office of the AG (A&E) I, Madhya Pradesh, Gwalior (Annexure A-4). According to this order, consequent upon the relief of Shri Niranjan Pant, Senior DAG (Admn.) from that office, the applicant had assumed the charge of DAG (Admn.) on 30.6.87 (A.N.) as per orders of A.G. (A&E) dated 29.6.87. The applicant was declared as Head of the Office for the office of A.G. (A&E) I, Madhya Pradesh, with effect from 30.6.87 AN till further orders. He was also delegated other powers as mentioned in that order.

4. Vide order dated 3.8.1987 issued from the office of C&AG, special pay was sanctioned to the incumbents of 14 Junior Administrative Grade Level posts and 22 Senior Time Scale Level posts mentioned in Annexures 'A' and 'B' respectively of that order. The quantum of special pay was Rs.400/- per month to a JAG level officer and Rs.200/- per month to a Senior Time Scale officer, and all efforts were to be made to put officers of the right level to those posts. If, however, it was not administratively possible to do so, special pay was to

be regulated as under: -

- (i) When a JAG level post indicated in Annexure 'A' is held by a Senior Time Scale Officer, the post will be down-graded and the Senior Time Scale officer will get a special pay of Rs.200/- per month.
- (ii) When a JAG level officer is posted against a Senior Time Scale post indicated in Annexure 'B' he will not be entitled to any special pay.

These orders were effective from 3.8.1987.

5. It may also be stated here that the post of DAG belongs to Senior Time Scale and that of the Senior DAG to the Junior Administrative Grade.

6. The applicant's claim is that he held full charge of the duties of the post of Senior DAG (Admn.) during the period from 1.7.1987 to 22.9.1987 and that he is entitled to officiating pay of the higher post under F.R. 49(i) and also to a special pay of Rs.400/- per month instead of a special pay of Rs.200/- per month sanctioned to him for the period 3.8.1987 to 22.9.1987. The applicant has also stated that respondent No.1 had issued orders on 9th September, 1983 in a similar case of Shri Niranjan Pant, who held charge of the post of Senior DAG temporarily at Guwahati in addition to his own duties as DAG in the office of the AG, Assam, Shillong (Annexure A-2).

7. The case of the respondents is that in the Indian Audit & Accounts Department, the Senior Time Scale (DAG) and JAG (Senior DAG) posts are Group supervisory posts and may be held by a Senior Time Scale or JAG officer depending upon availability. As Shri Pant was to be relieved for training abroad, the applicant being the only group officer available in the office of Respondent 2, was asked to relieve Shri Pant and at no point of time, the applicant was appointed/promoted as Senior DAG in Junior Administrative Grade. It is also their
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case that the order dated 3.8.87 (Annexure A-5) inter-alia, provided that when a JAG level post carrying a special pay is held by a Senior Time Scale officer, the latter will get a special pay of Rs.200/- p.m. and accordingly the applicant was granted a special pay of Rs.200/- per month from 3.8.87 to 22.9.87. The applicant is stated to have assumed the charge of the post of DAG (Admn.) on 30.6.87 (A.N.) and not as Senior DAG as evidenced by Office Order dated 9.7.87 (Annexure A-4). Since both the charges of DAG (Accounts) and DAG (Admn.) were in the same cadre and in the same office carrying identical scale of pay, additional remuneration was not admissible to the applicant in accordance with the provisions of F.R. 49(i) and the provisions of F.R. 49(i) are not attracted in his case. His representation was duly considered and a reply was sent on 15.11.1988 (Annexure A-14).

8. We have perused carefully the documents on record and have also heard the learned counsel for the parties.

9. The pay of a Government servant who is appointed to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government is regulated under F.R. 49. Whereas the applicant claims that his pay should be regulated under F.R. 49(i), the respondents state that his case is covered by F.R. 49(ii). These provisions are reproduced below: -

"(i) where 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

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pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post;

(ii) where a Government servant is formally appointed to hold dual charges of two posts in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge;

Provided that if the Government servant is appointed to an additional post which carries a special pay, he shall be allowed such special pay; "

It is seen from the above that unless a Government servant is formally appointed to hold full charge of the duties of a higher post, he is not entitled to fixation of pay under F.R. 49(i). In the case before us, the applicant was never appointed to the post of Senior DAG (Admn.) "to hold full charge of the duties of a higher post" whether formally or informally. Order dated 29.6.1987 passed by A.G. (AE)-I (Annexure A-3) is reproduced below: -

" June 29, 1987.

Shri Niranjan Pant, Sr D A G (Admn), is going abroad for training. He has to be relieved for proceeding to Delhi and onwards, on 30th June 1987 (afternoon). A communication has been sent by me to Asstt Compt & Ar Genl (P) for making arrangements for looking after his charge. Pending receipt of instructions from C A G's office, Shri Pant may hand over charge to Shri G L Garg, Dy Accountant General (Accounts). Action as per the instructions of the C A G may be taken after receipt of the orders.

Sd/-
29.06.1987
A G (AE)-I

Shri Niranjan Pant
Sr D A G (Admn)

Shri G L Garg
D A G (Accounts)

Secretary to AG (AE)-I.

This order shows that the competent authority - and it is not in dispute that C&AG was the competent authority, was to make arrangements in the temporary absence of Shri Niranjan Pant, Senior DAG (Admn.). What the A.G. (AE)-I did was, he referred the matter to the office of Respondent No.1 and pending receipt of instructions from him, asked Shri Niranjan Pant to hand over charge to the applicant. Respondent No.2 was neither competent to appoint the applicant to hold full charge of the post of Senior DAG (Admn.), nor his order dated 29.6.1987 can be deemed to have done that. This order, inter-alia, clearly provided that action as per the instructions of the C&AG may be taken after receipt of the orders. These orders were received vide Annexure A-6, by which one Shri O.P. Patniwal, A.O., was entrusted with the charge of DAG (Admn.) in the absence of Shri Niranjan Pant.

10. It is true that the post of Senior DAG (Admn.) held by Shri Niranjan Pant before he proceeded abroad for training, was formally down-graded to that of DAG (Admn.) vide C&AG's order dated 22.9.87 and it was, therefore, argued by the applicant that during the period he held the post, it had not been down-graded. But it has to be seen that neither the order dated 29.6.1987 in pursuance of which Shri Niranjan Pant handed over charge to the applicant, nor the Office Order dated 9.7.1987 by which he was declared as Head of Office and delegated certain other additional powers show that the applicant ever assumed charge of the post of Senior DAG (Admn.). Though the applicant has prayed for a direction to Respondent No.1 to issue his formal appointment order to the post of Senior DAG, yet, as we have discussed above, the question of formal appointment order to the post of Senior DAG would arise if there is any informal order or arrangement to that

effect. The applicant has not been able to establish that he was either entrusted with the full duties of the post of Senior DAG (Admn.) or he ever assumed the full charge of that post.

11. The applicant has also taken the plea of arbitrariness and discrimination inasmuch as one Shri Niranjan Pant was formally appointed to the higher post of Senior DAG and that too for a shorter period. The relevant notification (Annexure A-2) shows that respondent No.1 had promoted Shri Niranjan Pant, IAAS, to Junior Administrative Grade of the Service for the period from 6.11.1982 to 20.12.1982 as a purely temporary measure, without prejudice to the rights of his seniors. It is also stated in this notification period that during the above, Shri Pant held the charge of the post of Senior DAG at Guhati in addition to his own duties as DAG in the office of Accountant General Assam, Shillong. It is clear from this notification that the two posts were at different stations, while the posts of which the applicant had dual charge were in the same office. His case comes under F.R. 49 (iii), while the applicant is claiming application of the provisions of F.R. 49(i). Thus, the two are not equally placed and the plea of discrimination basis of the is not tenable. On the material before us, the plea of arbitrariness is also not substantiated in view of the circumstances mentioned in the order dated 29.6.87 under which the applicant was asked to take charge; the subsequent orders received from the C&AG in which the post of Senior DAG (Admn.) was formally down-graded to that of DAG (Admn.); the C&AG's orders dated 3.8.1987 on the subject of grant of special pay to certain posts mentioned therein; and the Office Order dated 9.7.87 which clearly states that the applicant had assumed the charge of the Cler.

post of DAG (Admn.) on 30.6.87 (A.N.).

12. As regards the prayer for grant of a special pay of Rs.400/- per month instead of Rs.200/- per month, this cannot be granted in view of the clear provisions of the order dated 3.8.87 (supra). In his application, he has challenged the validity of these orders. However, in his rejoinder-affidavit, the applicant has stated that the grant of special pay at Rs.400/- per month if the post is held by a JAG level officer and at Rs.200/- per month if the post is held by a Senior Time Scale Officer for doing the same work is unreasonable, unjustified and discriminatory and is violative of Articles 14 and 16 of the Constitution of India. As no such ground has been taken in the application, we cannot adjudicate the constitutionality or otherwise of the order dated 3.8.1987 in that behalf.

13. The respondents in the counter-affidavit have also raised preliminary objections. The first is that the cause of action of the application had accrued outside the jurisdiction of the Principal Bench and, as such, the application is liable to be rejected as it had been filed before a Bench which has no territorial jurisdiction. The applicant has stated that the cause of action has arisen on non-acceptance of the applicant's claim by respondent No.1 i.e., C&AG, who alone is the competent authority and the fact that the relief is being sought against him and that he resides at New Delhi, the application is within the territorial jurisdiction of the Principal Bench of the C.A.T. Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 also provides for filing the application with the Registrar of the Bench within whose jurisdiction, inter-alia, the cause of action, wholly or in part, has arisen. In view of

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this as also in view of the fact that the applicant has retired from the service of the respondents on 30.4.1988, we are not inclined to agree with the preliminary objection raised by the respondents in regard to the territorial jurisdiction.

14. Another preliminary objection raised by the respondents is that the application is barred by limitation as the applicant had filed his first representation on 2.12.1987 and he should have filed this application after waiting for six months. The applicant, on the other hand, has stated in his rejoinder-affidavit that having no response from respondent No.2 to the three letters sent by him on 2.12.1987, 24.2.1988 and 30.3.1988, he represented to respondent No.1, who was competent to decide the matter, on 25.4.1988 followed by two reminders dated 24.6.1988 and 26.9.1988. Respondent No.1 rejected his claim only on 15.11.1988 and the application has been filed within one year of the aforesaid date. It is true that the applicant should have represented to the competent authority in the first instance itself i.e., C&AG, instead of first representing to respondent No.2 who was not competent to take a decision in the matter. However, respondent No.1 having entertained the representation of the applicant and having passed an order thereon for the first time on 15.11.1988, the limitation will commence from that date (S.S. RATHORE Vs. STATE OF MADHYA PRADESH - AIR 1990 S.C. page 10).

15. The preliminary objection about non-joinder of Union of India as a party/by the applicant by amending his application with the permission of the Tribunal. The objection about misjoinder of parties has no basis.

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16. In view of the foregoing discussion, we find no merit in this application, which is accordingly dismissed. We leave the parties to bear their own costs.

Sharma
(J.P. SHARMA)
Member (J)

Lalji 19/9/96
(P.C. JAIN)
Member (A)