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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

D.A. 438/88

Date of decision: 06.10.1993

B.N. Chopra

... Petitioner

Versus

Union of India
through the Secretary,
Ministry of Agriculture
and Cooperation,
New Delhi & Anr.

... Respondents

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the petitioner

- Shri K.L. Bhatia, Counsel.

For the respondents

- Shri P.P. Khurana, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The petitioner, Shri B.N. Chopra, was a confirmed Office Superintendent in the Delhi Milk Scheme in the scale of Rs.1640-2900. The next promotional post available to him was that of ^{Assistant} Administrative Officer in the scale of Rs.2000-3200.

The petitioner acquired necessary eligibility for promotion to the said post. On 12.2.1987, an order was made as per Annexure-IV allowing the petitioner along with two others to hold the current charge of the higher post of Assistant Administrative Officer subject to the condition that no additional remuneration for holding the higher post will be paid until regular arrangements are made to fill-up the vacancies. While functioning in accordance with the said order, he retired from service on 30.4.1988. This D.A. was filed before his retirement on

10.3.1988 in which he has prayed for a direction to pay him the salary and allowances of the post of Assistant Administrative Officer w.e.f. 12.2.1987 and also for a direction to promote him to the post of Assistant Administrative Officer w.e.f. 1.3.1985, the date from which he was holding the full charge of the higher post of Assistant Administrative Officer with all consequential benefits.

2. Shri Bhatia, learned counsel for the petitioner, submitted that the petitioner was required to discharge the duties and responsibilities of the higher post of Assistant Administrative Officer w.e.f. 12.2.1987 which, in fact, he did and that, therefore, he is entitled to the emoluments attached to the post of Assistant Administrative Officer. He submitted that the stipulation in Annexure-IV denying him the benefit of the emoluments of the higher post being opposed to the statutory provision contained in F.R.49(i), the same should be ignored and the benefit of salary of the higher post accorded to him. Shri P.P. Khurana, learned counsel for the respondents, submitted that FR 49(i) is not attracted to the facts of this case as the petitioner was not formally appointed to hold full charge of the duties of the Assistant

Administrative Officer. He maintained that what gets attracted is FR 49(v) which provides that 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. He invited our attention to the language employed in the order in Annexure-IV which says that the petitioner is allowed to hold the current charge of the higher post of Assistant Administrative Officer. We shall, therefore, examine if the petitioner's contention that FR 49(i) is attracted, is sound or not. The language of FR 49(i) makes it clear that it would be attracted only if the Government servant is formally appointed to hold the full charge of the duties of a higher post and is appointed to officiate in such a higher post. If we look at the order, Annexure A-IV, it becomes clear that no words have been used in the said order to convey that the petitioner was formally appointed to hold the full charge of the ^{post of} Assistant Administrative Officer or that he was appointed to officiate in the said post. The language employed on the contrary makes it clear that the petitioner was allowed to hold the current charge of the higher post of Assistant Administrative Officer. On the language of the order, in question, we have no hesitation in holding that FR 49(i) is not attracted to this case. Shri Bhatia, learned counsel for the petitioner, however relied upon the judgement of the Tribunal in O.A. 1665/87, decided on 17.5.1993 between Kartar

Singh Vs. Union of India. That was also a case of an employee under the Delhi Milk Scheme. Shri Kartar Singh/ was holding the post of Senior Analyst was ordered to officiate in the higher post of Dairy Chemist/Bacteriologist during various spells between 1973 and 1977. He was also paid the salary of the higher post when he functioned in the post to which he was temporarily promoted. On a subsequent occasion, the post of Dairy Chemist became vacant on 20.7.1985. An order was passed on 29.11.1985 directing Shri Kartar Singh to look after the work of Dairy Chemist in addition to his own duties subject to the stipulation that he would not be paid any remuneration. The Tribunal after examining the scope of the order dated 29.11.1985 and the pleadings in that case held that FR 49(i) was attracted as the petitioner in that case was by order dated 29.11.1985 directed to look after the work of the Dairy Chemist in addition to his own duties. In other words, the Tribunal found that the petitioner in that case was appointed to hold full charge of the duties of a higher post. In that view of the matter, it was held that the stipulation denying the emoluments of the higher post being/conflict with FR 49(i), the same should be ignored and the emoluments of the higher post paid to him. It is not possible to derive support from this decision by the petitioner in this case for the reason that the terms of appointment in the present case are quite different from the terms of appointment

which were examined in the case of Kartar Singh. In the present case, as already stated, specific language has been used in the impugned order that the petitioner has been asked only to hold the current duties of a higher post in addition to charge of the post of Office Superintendent. The language of the impugned order makes it clear that the petitioner was not formally appointed to hold the full charge of the duties of the Assistant Administrative Officer. The language of the order Annexure A-IV attracts FR 49(v) which makes it clear that the emoluments of the higher post are not payable in cases where a person is appointed to hold the current charge of the routine duties of another post. Though the petitioner has stated that he has been discharging the duties and responsibilities of the post of Assistant Administrative Officer, in the reply filed by the respondents it is asserted that the petitioner was merely holding current charge of the routine duties of another post of Assistant Administrative Officer. Further, it is pointed out in paragraph 6.16 of the reply that the duties and responsibilities attached to both the posts under reference are more or less the same and that the allegation of exploitation cannot, therefore, be accepted as sound. On the materials placed before us, we are inclined to accept the version of the respondents that the petitioner was only holding additional current charge of the post of Assistant Administrative Officer and that he was not appointed to hold full charge of the duties of a higher post of Assistant Administrative Officer either from 18.2.1985 or from 12.2.1987.

3. As FR 49(v) is attracted to this case, he is not entitled to be paid the higher emoluments of the post of Assistant Administrative Officer.

4. Before concluding we should advert to another prayer for promotion to the cadre of Assistant Administrative Officers. The fact that there were vacancies at the relevant point of time is not seriously disputed. It is also not the case of the respondents that the petitioner was not eligible for promotion. In these circumstances, normally one would expect the respondents to consider the case of the petitioner for promotion. Merely because there are vacancies and the petitioner is eligible and the seniormost person in the feeder category, it does not mean that he has a right to compel the authorities to fill up the vacancies. It is well settled that the administration can decide not to fill up the existing vacancies for variety of reasons. If non-filling up of regular vacancies is malafide or arbitrary exercise of powers, such action may be amenable to the jurisdiction of this Tribunal. In this case, there is no allegations of malafide against the respondents. The respondents have pleaded that the vacancies could not be filled up by regular promotion on the ground that Staff Inspection Unit was required to examine the staff structure and to make appropriate recommendations in regard to the number of posts required. Pending decision of such recommendations, a direction was issued not to fill up any of the vacancies except with prior permission obtained.

Though a recommendation appears to have been made to fill up the vacancies by promotion, that did not result in any regular promotion being granted. If the authorities pending decision of the recommendations of the Staff Inspection Unit decided not to fill up the vacancies, it cannot be said that the decision not to fill up the vacancies was arbitrary and, therefore, violative of Article 14 of the Constitution. That being the position, it is not possible to issue a direction to consider the case of the petitioner for promotion.

5. For the reasons stated above, this petition fails and is, therefore, dismissed. No costs.

Infra
(S.R. ADIGE)
MEMBER(A)

Malimath
(V.S. MALIMATH)
CHAIRMAN

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