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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.675/88

Date of decision: 2.9.1993.

Shri N.L. Malhotra

...Petitioner

Versus

Union of India through the
Secretary, Ministry of
Home Affairs & Another

...Respondents

Coram:- The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner

Shri K.L. Bhatia, Counsel.

For the respondents

Shri P.P. Khurana, Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

We have heard Shri K.L. Bhatia, learned counsel for the petitioner. Shri P.P. Khurana, learned counsel appeared for the respondents. The case of the petitioner in brief is that he was appointed as Assistant Administrative Officer in Delhi Milk Scheme (DMS) on 31.12.1981. According to the recruitment rules he was eligible for promotion to the post of Administrative Officer which was to fall vacant on 31.10.1986. The post of Administrative Officer is a selection post and Assistant Administrative Officers with three years' regular service is eligible for consideration for the said post. A Departmental Promotion Committee (DPC) was held on 30.5.1986 to make recommendations for filling up the vacancy of Administrative Officer which was due to arise on 31.10.1986 consequent to the retirement on superannuation of the incumbent of the post of Administrative Officer. The learned counsel for the petitioner contends that the petitioner was recommended by the DPC for

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filling up the post of the Administrative Officer. He was, however, not appointed on regular basis on the ground that the Staff Inspection Unit (SIU) had imposed a ban on filling up the vacancies. The SIU had recommended declaration of 833 posts as surplus. There was also a ban imposed on filling up the vacancies. These facts are not disputed by the respondents. It is contended by the learned counsel for the petitioner that the post of Administrative Officer was not one of the posts which was recommended for being declared as surplus by the SIU. While the respondents did not appoint the petitioner as Administrative Officer on regular basis, vide order dated 31.10.1986 they appointed him to look after the work of Administrative Officer in addition to his own post without payment of any additional remuneration with effect from the same date. The duties of the Administrative Officer were also reallocated vide order of the same date between the Administrative Officer (Estt.) and Administrative Officer (General). The latter post was held by the petitioner. The petitioner retired on superannuation from service on 30.10.1989. Before that date the respondents issued an order on 1.8.1989 to the following effect:-

"In pursuance of the provisions of F.R.49(i), Shri N.L. Malhotra, Assistant Administrative Officer is appointed to hold the full charge of the post of Administrative Officer in the pay scale of Rs.2375-75-3200-EB-100-3500 for a period of three months with effect from the forenoon of 1st August, 1989 or till further orders, whichever is earlier."

It is not disputed that the petitioner was appointed to look after the duties and responsibilities of the higher post of Administrative Officer (General) w.e.f. 31.10.1986.

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This is clear from the order dated 31.10.1986 (copy placed at pages 14-15 of the paperbook). Eventually the respondents also regularised the services of the petitioner as Administrative Officer under the provisions of F.R. 49(i). F.R. 49(i) reads as under:-

"F.R.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) 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 pay under Rule 35; but not additional pay shall, however, be allowed for performing the duties of a lower post;"


The case of the petitioner is that he was appointed to higher post of Administrative Officer on the basis of the recommendations made by the DPC. This fact is admitted by the respondents in their counter-affidavit. The vacancy was a regular vacancy, as it arose consequent to the retirement on superannuation of the incumbent of the said post. The petitioner appointment on this post, therefore, for all purposes was on a regular basis. He was thus in fact holding the full charge of the post of Administrative Officer. The order of the respondents detailing him to look after the duties of the post of Administrative Officer is too thin as camouflage as to detract from the fact that the petitioner was effectively holding the post of

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Administrative Officer. In the above facts and circumstances of the case the petitioner is entitled to the pay of the higher post in accordance with F.R. 49 - we also note that the petitioner was not paid any dual charge allowance. The learned counsel also referred us to the judgement of the Principal Bench of the Tribunal in OA No.1665/87 between Kartar Singh & Union of India through Ministry of Agriculture decided on 17.5.93.

In the above conspectus of the case we hold that the petitioner shall be entitled to the payment of salary and allowances from 31.10.86 as applicable to the higher post of Administrative Officer in the pay scale of Rs.2375-75-3200- EB-100-3500. Since the petitioner has already retired from service he shall also be entitled to the pensionary benefits in accordance with the salary and allowances which have been allowed to him as per above orders. Ordered accordingly. The respondents are directed to make payment of arrears of salary and allowances and recompute his pension and other benefits as above within a period of six months from the date of communication of this order. No costs.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASGOTRA)
MEMBER(A)

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