

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 1145/1986  
T.A. No.

199

DATE OF DECISION 19.01.1993

Shri P.T.L. D'Souza ~~Petitioner~~ Applicant  
Applicant in person Advocate for the ~~Petitioner(s)~~ Applicant  
 . Versus  
Delhi Administration through its Respondent  
Chief Secretary & Another  
Ms. Geeta Luthra Advocate for the Respondent(s)

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The Hon'ble Mr.P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr.B.N. DHOUNDIYAL, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *ye*
2. To be referred to the Reporter or not ? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement ? */*
4. Whether it needs to be circulated to other Benches of the Tribunal ? */ no*

### JUDGMENT (ORAL)

(of the Bench delivered by Hon'ble Shri P.K. Kartha,  
Vice Chairman(J))

We have gone through the records of the case and have heard the applicant in person and the learned counsel for the respondents. The applicant filed this application under Section 19 of the Administrative Tribunals Act, 1985, while he was working as Superintendent, Tihar Jail, New Delhi. The relief sought by him is for payment of salary and allowances of the post of Assistant Legal Advisor for the period from 17.9.1981 to 30.09.1982.

2. The applicant was appointed as Assistant Sales Tax Officer under the Delhi Administration in 1978 in the scale

of pay of Rs.550-900. According to him, he has performed the duties of the higher post of Assistant Legal Advisor which is ex-cadre post in the Sales Tax Department for a period of one year and 11 days from 17.09.1981 to 30.09.1982. The respondents have not issued to him any appointment order. The applicant claims that he had appeared in 360 cases before the Sales Tax Appellate Tribunal as departmental representative. He has shown to us some of the orders of the said Tribunal in which some others who have appeared as departmental representative <sup>and</sup> ~~and~~ had been given higher pay scales. The applicant is also claiming the pay scale of Assistant Legal Advisor for the period during which he performed higher duties.

3. The case of the respondents is that the applicant had appeared in a few cases before the said Tribunal on behalf of the department. He cannot, however, claim higher pay scale as an Assistant Legal Advisor to which he was never appointed even on ad hoc basis.

4. During the hearing, we have been informed that there are two posts of Assistant Legal Advisor in the Sales Tax Department which are to be filled up in accordance with the Recruitment Rules. At the relevant time when the applicant performed the duties of the post

of Assistant Legal Advisor, one post was vacant.

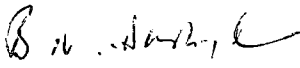
5. The applicant has based his claim on FR 49, according to which, the Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government. 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. In the instant case, there is no formal order of appointment of the applicant as Assistant Legal Advisor and in view thereof, we are of the opinion that FR 49 would not be applicable to the instant case.


6. The applicant has drawn our attention to the various orders of the Sales Tax Appellate Tribunal in which he had appeared as departmental representative. We are of the opinion that in the interest of justice, the respondents should consider giving of suitable honorarium to the applicant for the extra work done by him during the period from 17.09.1981 to 30.09.1982

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in accordance with the provisions of FR 46. We order and direct accordingly. The respondents shall do the needful in the matter expeditiously and preferably within a period of 3 months from the date of communication of this order.

There will be no order as to costs.

  
(B.N. DHOUNDIYAL)  
MEMBER (A)  
19.01.1993

  
(P.K. KARTHA)  
VICE CHAIRMAN(J)  
19.01.1993

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