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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.1665/87

Date of Decision:17.05.1993

Kartar Singh

Applicant

Versus

Union of India thro'

M/O Agriculture

Respondents

Shri K.L. Bhatia,

Counsel for the applicant

Ms. Pratima Mittal,

Proxy counsel for

Shri K.C. Mittal

Counsel for the respondents

CORAM: The Hon. Mr. A.B. GORTHI, Member(A)

The Hon. Mr. C.J. ROY, Member(J)

JUDGEMENT(Oral)

(delivered by Hon. Member(J) Shri A.B. GORTHI)

The claim of the applicant in this OA is that in consequence of the order dated 29.11.85, he took over the charge of Dairy Chemist in addition to his own duties and hence, he should be given due pay and allowances, to which, he became admissible.

2. The applicant was appointed as a Senior Analyst in the Delhi Milk Scheme(DMS) on 6.7.65. His next higher post in the channel of promotion is that of Dairy Chemist. The applicant, being a senior most Senior Analyst was ordered to officiate in the higher

post of Dairy Chemist/Bacteriologist during various spells between 1973-1977. Whenever he performed duties in the said higher post, he was granted pay and allowances pertaining to that higher post. The post of Dairy Chemist fell vacant on 20.7.85. The respondents then issued the order dated 29.11.85, directing the applicant to look after the work of Dairy Chemist in addition to his own duties. The said order, however, stipulated that he would not be paid any additional remuneration. Aggrieved by the same, he did represent to the authorities concerned, who explained that as there was Government ban on filling ~~up~~ the post of Dairy Chemist, he would not be entitled to the pay and allowances. Later on, it seems that the ban ^{was} ~~has been~~ lifted and the applicant has been promoted on a regular basis to the post of Dairy Chemist after having been duly found fit by the DPC.

3. The respondents in their brief reply affidavit have admitted most of the essential and basic facts of the case. They however, strongly contended that the applicant is not entitled to the pay and allowances of a Dairy Chemist because, there was a Government ban on promotion to the said post. Admittedly, the respondents did grant him the due pay and allowances whenever he had earlier officiated on adhoc basis in the post of Dairy Chemist/Bacteriologist. The respondents further admit that in pursuance of their order dated 29.11.85, the applicant did perform the duties of Dairy Chemist in addition to his own ^{work} ~~continuat~~, till he was regularly promoted. In support of their contention, that the applicant is not

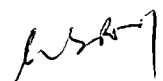
entitled to the pay of a Dairy Chemist, the respondents have relied on FR 49(iv), which reads as under:

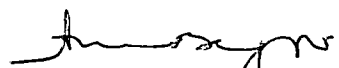
"No additional pay shall be admissible to a Government servant who is appointed to hold current charge of routine duties of another post, or post irrespective of the duration of the additional charge."

4. Admittedly, the post of Dairy Chemist is a higher post for which the applicant was in any case in the line of promotion. In fact he did officiate on an adhoc basis on a number of times in the higher post for which, he was paid due remuneration apertinent to the said post. In this connection, we may refer to the FR 49(i), ^{which is} to the effect ^{that when} ~~whether~~ 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 pay admissible to him, if he is appointed to officiate in the higher post. In this case, we do find that the order issued by the respondents on 29.11.85 is a formal order and that it is to the effect that the applicant ^{will} ~~to~~ look after the work of Dairy Chemist in addition to his own duties. The applicant's case is thus fully covered by FR 49(i), ~~notwithstanding~~ the fact that the said order contains the stipulation that the applicant would not receive any additional remuneration. The respondents in our opinion, are not justified in laying down such ^a stipulation, which violates FR 49(i).

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5. In view of the aforesaid, we find that there is merit in this application and accordingly, the respondents are hereby directed to pay the applicant, the pay applicable to that of a Dairy Chemist at the relevant time. The payment should be made within a period of 3 months from the date of communication of this order. As regards the applicant's prayer that he be directed to be appointed to the post of Dairy Chemist on regular/adhoc basis, the same cannot be granted in the light of the facts already stated. We make it further clear that the payment of remuneration to the applicant would not constitute a ground for counting his service in the ^{of his} ~~past~~ as Dairy Chemist or for the purpose ~~such as~~ seniority. The application is allowed in the above terms with no order as to costs.


 (C.J. ROY)
 MEMBER(J)
 17.05.1993


 (A.B. GORTHI)
 MEMBER(A)
 17.05.1993

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