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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No.2916/2004

New Delhi this the 21<sup>st</sup> day of July, 2005.

**Hon'ble Mr. Shanker Raju, Member (Judl)**  
**Hon'ble Mr. S.K. Malhotra, Member (Admnv)**

Y.R. Mahajan,  
S/o late Shri Karam Chand Mahajan,  
A-60, Vikas Puri,  
New Delhi-110018.

-Applicant

(Applicant in person)

-Versus-

1. Union of India,  
represented through  
Secretary, DP&S,  
Dept. of Defence Production & Supplies,  
Ministry of Defence,  
South Block,  
New Delhi-110011.
2. The Director General,  
DGAQA, Ministry of Defence,  
H Block, New Delhi-110011.
3. The Secretary,  
UPSC, Dholpur House,  
Shahjahan Road,  
New Delhi-110011.

-Respondents

(By Advocates Shri N.K. Aggarwal & Shri Ashish Nischal, proxy  
for Shri Rajinder Nischal)

**O R D E R**

**Mr. Shanker Raju, Hon'ble Member (J):**

Applicant, who had retired on superannuation as Deputy  
Director General, DGAQA, has sought a direction to the  
respondents to pay him the emoluments as difference of the pay  
scale of Rs.22400-24500 and the resultant pensionary benefits

having performed higher duty of the post of Director General w.e.f. 2.9.2002 to 28.2.2003.

2. Applicant who had been working as Deputy Director General for want of promotion with the approval of the competent authority, i.e., Minister of Defence handed over the charge of Director General AQA in addition to his own duties w.e.f. 1.9.2002 on pro tem measure.

3. Applicant had assumed full charge of the higher post of Director General and had exercised full administrative, financial as well as statutory powers attached to the higher post of Director General. The aforesaid assumption of charge by applicant was resultant of a proposal sent to the UPSC for promotion of the feeder cadre candidate to the post of Director General in the Ministry of Defence. As it was found that applicant was the sole eligible incumbent and was retired on superannuation on 28.2.2003. As an alternate deputation of a suitable officer has been suggested to fill up the post.

4. On retirement on superannuation applicant who has been paid the higher emoluments of the post of Director General has filed the present OA.

5. Applicant, who appeared in person, stated that once he has been appointed with the approval of the Minister concerned and had performed statutory functions, financial as well as on administrative side and had been assigned duties of the higher post of Director General as per FR 49 (1) he cannot be deprived of the officiating pay.

6. It is contended by applicant that appointment of Director General on formal basis had already been taken place with the approval of the Minister concerned without involvement of Appointments Committee of Cabinet (ACC) in the past. It is further stated that by an order dated 28.1.2004 one K.N. Sinha had been appointed as Director General on ad hoc basis for a month without approval of ACC and had been paid the pay attached to the post. Accordingly, it is stated that Government's stand in his case is discriminatory and cannot stand scrutiny of law under Article 14 of the Constitution of India.

7. Whereas Shri N.K. Aggarwal, learned counsel appearing for respondents vehemently opposed the contentions and stated that as applicant was the lone Deputy Director General and was to superannuate shortly a proposal from UPSC has recommended for filling up the post on deputation and not by promotion vide letter dated 14.2.2003. Accordingly, applicant has been appointed as Director General on pro tem measure, whereas the formal appointment is through ACC. As such, FR 49 would have no application.

8. On careful consideration of the rival contentions of the parties FR 49 (1) is reproduced 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 no additional pay shall, however, be allowed for performing the duties of a lower post;"

9. Regarding guidelines on additional charge of the current duties of another post under FR 49, the following decision has been taken vide GI DoPT OM dated 11.8.89:

"As per FR 49 (iv) no additional pay is admissible to a Government servant who is appointed to hold current charge of the routine duties of another post irrespective of the duration of the additional charge. In practice it is observed that in a number of cases, officers are appointed to hold additional charge of current duties of another post but the duties are not defined in the order and therefore, the officer performs all the functions of the other post including even some statutory function. However, no additional remuneration is paid to him in view of the specific language of the order of his appointment. In certain other cases, an officer is asked to hold additional charge of another post (which implies full charge of the other post), but he is not formally appointed to that post and, therefore, no additional remuneration is paid to him under FR 49. These have led to representations and litigations.

2. With a view to avoiding recurrence of such situations, the following guidelines may be followed while considering the question of entrusting additional charge of another post to an officer--

(i) When an officer is required to discharge all the duties of the other post including the statutory functions, e.g., exercise of power derived from Acts of Parliament such as Income Tax Act or the Rules, Regulations, By-Laws made under various Articles of Constitution such as FRs, CCS (CCA) Rules, CSRs, DFPRs, etc., then steps should be taken to process the case for getting approval of the competent authority and formal orders appointing the officer to the additional post should be issued. On appointment, the officer should be allowed the additional remuneration as indicated in FR 49.

(ii) Where an officer is required only to attend to the usual routine day-to-day work of non-statutory

nature attached to the post, an order may be issued clearly stating that the officer will be performing only the routine day-to-day duties of non-statutory nature and that he would not be entitled to any additional remuneration. The office order should also specify what duties he would be discharging or what duties he would not be discharging." [G.I. Dept. of Pers. & Trg., OM NO.4/2/89-Estt.(Pay-II, dated the 11<sup>th</sup> August, 1989]

10. If one has regard to the above, in cases where officers are appointed to hold additional charge of current duties and once a person holds full charge, including statutory functions, steps should be taken to process the case for getting the approval of the competent authority.

11. The following directions have been issued by the Ministry of Law in case of current duty charge:

"The Law Ministry has advised that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament, e.g., Income Tax Act or Rules, Regulations and By-Laws made under various Articles of the Constitution, e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules, etc." [G.I., MHA, OM NO.7/14/Estt.(A), dated the 24<sup>th</sup> January, 1963]

12. Further, regarding officers performing current duties, following decision has been taken:

"(2) Officers performing current duties of a post cannot exercise statutory powers under the rules. The Law Ministry has advised that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (i.e., Income Tax Act) or Rules, Regulations and By-Laws made under various Articles of the Constitution (e.g., Fundamental Rules,

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Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules, etc.)

[G.I., M.H.A., O.M. No.F.7/14/61-Ests.(A), dated the 24<sup>th</sup> January, 1963.]

It has been decided that an order appointing an officer to hold the current charge of the duties of a post should, in the absence of any specific direction to the contrary, be deemed to clothe the officer with all the powers vested in the full-fledged incumbent of that post. Such an officer should not, however, modify or overrule the orders of the regular incumbent of the post except in an emergency without obtaining the orders of the next higher authority.

Where the appointment to hold the current duties of a post involves the exercise of statutory or such other power conferred on the holders of the post, the appointment should also be notified in the Gazette.

[G.I., M.F., O.M. No.F.12(2)-E.II(a)/60, dated the 15<sup>th</sup> October, 1960.]

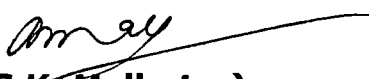
13. Cumulative reading of the above would indicate that in case of officers appointed to perform current duties if perform statutory functions it is incumbent upon the authorities to take prior approval of the competent authority, failing which the additional charge accorded to perform duty of the higher post would be a formal appointment.

14. Applicant in paragraph 4 (b), (c) and (d) averred that he has been appointed from obtaining necessary approval from the competent authority and had discharged statutory functions. Reply to these paragraphs by respondents has not specifically rebutted and in response to the contentions contents have been found as matters of record. Due to non rebuttal the pleadings are deemed to be admitted.


15. As regards issue of ACC is concerned, we find an order passed by the respondents on 28.1.2004, whereby for a period of one month one K.N. Singh has been appointed to the post of Director General without approval of the ACC on ad hoc basis and had been paid emoluments of the higher post. As such applicant cannot be discriminated being equally placed. This differential treatment is an anti thesis to principle of equality enshrined under Article 14 of the Constitution of India.

16. The Apex Court in **Selvaraj v. Lt. Governor of Island, Port Blair & Ors.**, JT 1998 (4) SC 500 and in **Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma & Ors.**, 1998 (5) SCC 87 ruled that one who has been put to officiate as a stop gap arrangement on a higher post is entitled to claim higher salary and any undertaking which is contrary to law to deny benefit is against the public policy.

17. In view of the above discussion, OA is partly allowed. Respondents are directed to pay to applicant difference in the pay and allowances of the higher post in the pay scale of Rs.22,400-24,500 for the period from 2.9.2002 to 28.2.2003, within a period of two months from the date of receipt of a copy of this order. No costs.

  
(S.K. Malhotra)  
Member (A)

'San.'

  
(Shanker Raju)  
Member(J)  
21/7/05