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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1421 OF 1997
ALLAHABAD THIS THE 7th DAY OF Oct. 2003

HON'BLE MAJ GEN. K. K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

B.P. Singh (Indian Postal Service)
at present Senior Deputy Director General,
(Vigilance) Postal Directorate,
New Delhi, Dak Bhawan,
Sansad Marg, New Delhi,
permanent resident of 63F/2 Beli Colony,
Stanley Road, Allahabad

.....Applicant

(By Advocate Shri S.P. Singh)

Versus

1. Union of India,
through Ministry of Finance and
its Secretary Government of India,
New Delhi.

2. Department of Personnel & Public Grievance,
Ministry of Home Affairs,
New Delhi.

3. Department of Post
Ministry of Communications through
its Secretary, Department of Post,
Dak Bhawan, New Delhi.

4. Chief Postmaster General,
U.P. Circle,
Lucknow.

.....Respondents

(By Advocate Shri R.C. Joshi)

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O R D E R

HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for the following reliefs:-

"a) to issue writ, direction or order in the nature of mandamus directing the respondents to make payment of full pay and allowances for holding the additional full charge of the post of the Post Master General Allahabad or Gorakhpur Region from 16th August 1993 to 22nd October 1997 in respect of the applicant and other Government servants who are appointed to hold additional full charge of equivalent post for a period beyond 39 days within a reasonable time.

b) to issue further a writ of mandamus for making payment of full pay allowances for holding the additional full charge of the post of Post Master General of Allahabad Region and Gorakhpur Region from 16th August 1993 to 22nd October 1997 with interest on the due pay and allowances at the rate of interest payable on the deposit in General Provident Fund (GPF) in the case of government servants from 16th August 1993 till payment is made to the applicant.

c) to issue further writ direction or order in the nature of mandamus directing the respondents to make payment of the cost of this claim petition."

2. The facts, in short, are that the applicant was Indian Postal Service Officer who in due course of time got promotions and by order of Department of Post dated 23.07.1993 (Annexure-1) he was transferred from the post of Post Master General (in short PMG) North Karnataka Region, Dharwad to the post of P.M.G. Gorakhpur Region. In pursuance to the order dated 23.07.1993 applicant took over the charge of PMG Gorakhpur on 14.08.1993. By order of respondent no.4 i.e. Chief PMG, U.P. Circle dated 16.08.1993, the applicant was directed to hold the charge of PMG Allahabad Region in addition to his own post without any extra remuneration. The applicant ^{assumed} ~~assured~~ the additional charge of PMG Allahabad Region on 16.08.1993 in addition to his own and relinquished the same on 03.12.1993 (FN). However, he was further ordered to hold additional charge of

PMG, Allahabad Region vide respondent no.4 order dated 31.1.1994 (Annexure A-6). The applicant assumed the additional charge of PMG Allahabad Region on 02.02.1994. By orders of respondent no.4 dated 31.05.1994 (Annexure A-8) and 28.06.1994 (Annexure A-9) the applicant continued holding additional charge of PMG Allahabad Region. The applicant by order dated 19.10.1994 (Annexure A-10) was transferred from the post of Gorakhpur Region to the post of PMG Allahabad Region with further orders to hold the additional charge of PMG Gorakhpur Region without any extra remuneration. In pursuance, to the order dated 19.10.1994, respondent no.4 i.e., CPMG, U.P. Circle, Lucknow issued order dated 11.11.1994 (Annexure A-11). The applicant relinquished the charge of PMG Gorakhpur Region on 26.10.1994 and this time ^{assumed the charge of PMG Allahabad Region} with additional charge of PMG Gorakhpur Region. The applicant continued holding the additional charge of PMG Gorakhpur Region under the orders of respondent no.4. The applicant was promoted in the grade of Senior Deputy Director/ Chief PMG vide Department of Posts order dated 09.10.1997 (Annexure A-15). Thereafter the Department of Posts issued another order dated 21.10.1997 (Annexure A-16) posting the applicant as Senior Dy. Director General (Vig). Therefore, in pursuance of the order dated 21.10.1997 the applicant relinquished the charge of PMG Allahabad Region with additional charge of PMG Gorakhpur Region on 22.10.1997 (AN). Since there was no mention regarding holding of additional charge of PMG Gorakhpur in the Department of Posts order dated 21.10.1997, the applicant made a detailed representation on 22.10.1997 seeking correction in the order dated 21.10.1997 and also regarding extra remuneration as he had held the additional charge of an independent region for more than four years. The representation of the applicant dated 21.10.1997 was faxed to Secretary Department of Posts. The applicant made several representations but the responses did

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not take any action/decision. Aggrieved by the same the applicant filed this O.A. on 18.12.1997 which has been contested by the respondents by filing counter reply.

3. Sri S.P. Singh, learned counsel for the applicant submitted that the applicant's claim is as per rules. He is neither claiming extra nor less. The learned counsel for the applicant argued the provisions of FR 49 as amended (amendment dated 23.06.1989) at length and submitted that as per FR 49 Sub Clause IV the applicant is entitled for extra remuneration in addition to his own pay and allowances. He also submitted that the pay of the highest bureaucrat is Rs.30,000/-, therefore, the applicant is entitled for extra remuneration upto Rs.30,000/-. The learned counsel has placed reliance on the order of Calcutta Bench of this Tribunal dated 03.08.2002 passed in O.A. No.378/00 which has attained finality as the same has not been challenged in any superior court.

4. Resisting the claim of the applicant Sri G.R. Gupta, learned counsel for the respondents submitted that the applicant, having accepted to hold additional charge without payment of any additional remuneration, cannot claim the same later on. It was communicated to him in writing that he had to hold the additional charge without any remuneration and, therefore, the applicant has no legal right to claim any extra remuneration beyond the scope of order.

5. Citing the example of Chief Post Master General, the learned counsel submitted that even the CPMG, U.P. Circle, in addition to his own charge, holds the charge of Lucknow Region

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but he is not being ^{paid} any additional emolument. Besides due to non-availability of sufficient number of persons in the grade in the department at a given time due to retirement, promotion, deputation etc. the applicant was given such an additional charge specifically stipulating that no extra remuneration shall be payable. It was an administrative arrangement and respondents are fully competent to order ^{for} such arrangements.

6. The learned counsel for the respondents also submitted that the Post of PMG Gorakhpur was temporarily redeployed in the Postal Department, New Delhi as General Manager ^{PLI} Scheme introduced by the Government and, therefore, the additional charge of PMG Gorakhpur Region had to be given to the applicant being PMG of neighbouring Region. In fact it was extension of the jurisdiction of PMG Allahabad.

7. The grounds taken by the respondents in counter reply have been denied by the applicant in RA.

8. Heard counsel for the parties, carefully considered their submissions and closely perused the records as well as the pleadings.

9. Admittedly the applicant has held the full additional charge of Allahabad Region as well as Gorakhpur Region for more than four years from 16.08.1993 to 22.10.1997 except for 61 days, without any ^{extra} remuneration. The argument of the respondents that it was extension of jurisdiction of PMG, Allahabad has no substance. The applicant did hold the additional charge of PMG Gorakhpur Region as well after taking over charge of PMG Allahabad Region and the argument of the respondents that the post of PMG Gorakhpur Region was redeployed in Postal Department

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New Delhi will not negate the fact that the applicant continued holding additional charge of PMG Gorakhpur Region till he relinquished charge of PMG Allahabad Region on 22.10.1997 (AN).

10. Another ground taken by the respondents is that the applicant was communicated in writing that he would not be entitled for any extra remuneration and, therefore, once he agreed for the same, he cannot legally claim extra remuneration. We raise a question to ourselves whether the applicant could refuse to carry out the orders of superior authority. The only answer to this question is 'NO' because in administration refusing to carry out the orders of the controlling authority would amount to misconduct and obviously the applicant carried out the orders of his controlling authority issued from time to time regarding holding of additional charge of a Postal Region. The respondents have also cited the example of CPMG, U.P. Circle that he is not being paid any extra remuneration for holding the charge of Lucknow Postal Region. We would not like to make any observation on this point as we are unaware of the arrangement in regard to CPMG in the Postal Regionalisation Scheme. However, this plea cannot be taken to deny the applicant his claim if that is covered under rules. Non-availability of equivalent officer can also not be accepted as a ground to deny the applicant his rightful claim if covered under ruled.

11. The crux of the matter is whether the claim of the applicant is covered by rules or not. The learned counsel for the applicant submitted that the claim of the applicant is covered under the provisions of FR 49 as amended. The applicant has taken this plea specifically in para 5(vii) of the O.A. under sub-head grounds and the respondents in para 27 of the counter have stated that as per FR 49 additional remuneration is admissible only when a Government Servant is formally appointed

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to hold additional charge of another post and in this case no such formal appointment was made.

12. For proper appreciation of the controversy it would be appropriate to quote FR 49 as decision in the case would finally depend whether the provisions of FR 49 would be applicable in this case or not. For convenience sake we would like to quote FR 49 as under:-

"F.R. 49. The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity of 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;
- (ii) where a Government servant is formally appointed to hold dual charges of two posts in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge;
Provided that if the Government servant is appointed to an additional post which carries a special pay, he shall be allowed such special pay;
- (iii) where a Government servant is formally appointed to hold (charge of another post) or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post, or of the highest post if he holds charge of more than two posts, in addition to ten percent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 39 days but not exceeding 3 months;

Provided that if in any particular case, it is considered necessary that the Government servant should hold charge of (another post) or posts for a period exceeding 3 months the concurrence of the Ministry of Finance shall be obtained for the payment of the additional pay beyond the

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the period of 3 months;

- (iv) where an officer is formally appointed to hold full additional charge of another post, the aggregate of pay and additional pay shall in no case exceed Rs.8,000;
- (v) 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;
- (vi) if compensatory or sumptuary allowances are attached to one or more of the posts, the Government servant shall draw such compensatory or sumptuary allowances as the Central Government may fix;

Provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts."

13. From careful reading of the FR 49, we observe that FR 49 provides for combination of appointments. Under the provisions of FR 49 the Central Government is authorised to appoint a government servant holding a post to officiate as a temporary measure in one or more other independent posts at one time and to regulate the pay of such government servant. FR 49 envisages five contingencies for such appointment with specific conditions for each of such appointments and quantum of the pay for each of such appointment. In order to examine the case of the applicant we would like to give such contingencies in a tabular form given as under:-

Sl. No.	Contingencies of combination of appointment	Conditions for such combination of appointment.	Quantum of justified pay for each.
(1)	Full charge of a higher post (F.R. 49(i))	Appointment to be (i) For a ml (ii) In the same office. (iii) In the same cadre/ line of promotion and, (iv) For any period	Pay of the higher post.
(2)	Performing the duties of a	for any period	No additional pay.

lower post
[F.R.49(i)]

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|-----|--|---|---|
| (3) | Dual charges of two posts (F.R.49(ii)) | (i) Formal
(ii) in the same office.
(iii) in the same cadre,
(iv) in the identical scale
(v) for any period | No Additional Pay |
| (4) | Holding charges of another post/ posts (F.R.49(iii)) | (i) Formal
(ii) in the same office or not
(iii) in the same cadre/ pay of additional line of promotion post or posts.
(iv) for a period exceeding 39 days. | Pay of the higher/ highest post plus 10% of presumptive |
| (5) | Holding current charge of routine duties of another post/posts (F.R.49(v)) | For any period | No additional pay. |

14. The case of the applicant certainly does not fall under the contingency at serial 1,2,3 and 5 of the above table as these contingencies are easily distinguishable. The case of the applicant falls under contingency at serial 4 of the above table. The logic behind FR 49 is to take note of combination of appointments and due compensation to the holder of such appointments. Besides FR 49 in addition to the above combination of appointments, provides for the maximum pay which would be admissible to such government servant in sub-para(iv) and grant of compensatory or sumptuary allowances attached to such post/ posts in sub-para (vi) thereof.

15. Sub-para(iv) of FR 49 was inserted under FR 49 by Government of India, Department of Personnel and Training

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notification no.4/17/88 Eatt. (Pay II) dated 23rd June 1989, which took effect from 15th July 1989 i.e., from the date of publication in the Gazette of India. This clause prescribed maximum limit at Rs.8,000/- in a month on receipt of aggregate of pay and additional pay for additional charge of post/posts. The rationale behind this limit of Rs.8,000/- (now revised to Rs.26,000/- with effect from 01 Jan 1996 on acceptance of recommendation of Vth Central Pay Commission) appears to be pay of the highest ~~xxx~~ Government servant under Government of India, i.e., Secretary of Govt. of India. However, the fact is otherwise. The maximum pay of a Government Servant prior to Vth Central Pay Commission was Rs.9,000/- (Revised to Rs.30,000/-). Therefore we feel that since there is justification of revision of the maximum limit from Rs.26,000/- to Rs.30,000/-, Govt. of India, should take decision in this regard.

16. We would like to observe that FR 49 provides for condition of formal appointment on the post/posts in cases of combination of appointments. It is for the authorities to issue the orders and the appointee has no role to play. If the respondents fail to take the required action, they are responsible for the same and not the Government Servant. The respondent's plea, that there was no formal appointment, has no substance. It cannot be denied that applicant did hold additional charge for a considerable length of time. We have also perused the order dated 03.08.2000 passed by Calcutta Bench of this Tribunal in O.A. No.378/2000 which has attained finality and find that the law laid down is squarely applicable in this case with which we are in respectful agreement. The applicant held full charge of additional posts.

- (i) Additional charge of PMG Allahabad Region from 16.08.1993 to 02.12.1993 and 02.02.1994 to 25.10.1994.

[Signature]

- (ii) Additional charge of PMG Gorakhpur Region from 26.10.1994 to 22.10.1997.

under formal orders of the competent authority and, therefore, entitled to receive additional pay subject to present existing maximum of Rs.8,000/-p.m. (revised to Rs.26,000/-pm. w.e.f. 01.01.1996) under provisions of FR 49 (iv). The action of the respondents in denying the same is arbitrary, irregular and against rules.

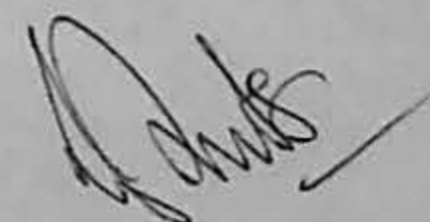
17. In the facts and circumstances and our aforesaid discussions the O.A. is allowed with following directions:-

- (i) The respondents to pay the additional pay to the applicant for additional charges subject to maximum of Rs.8,000/- (revised to Rs.26,000/- w.e.f. 01.01.1996 as prescribed in FR 49 (iv), within a period of three months from the date of communication of this order.
- (ii) Since the applicant has been denied his legal claim which is fully covered under rules the respondents shall pay to the applicant 10% interest on the amount payable from 18.12.1997 i.e., the date of filing of this O.A and to the date of payment.
- (iii) The applicant shall submit calculation of his claim to the respondent no.4 i.e., Chief Post Master General, U.P. Circle, Lucknow within four weeks.

We also direct respondent no.2 i.e. Ministry of Personnel,, Training and Public Grievances to consider taking action as observed by us in para 15 above in consultation with Ministry of Home Affairs and Ministry of Finance within reasonable period.

18. There shall be no order as to costs.


Member-B


Member-A

/Neelam/