

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

(P)

ORIGINAL APPLICATION NO. 911 OF 1997
ALLAHABAD THIS THE 12TH DAY OF FEBRUARY, 2004

HON'BLE MR. JUSTICE S. R. SINGH, V.C.
HON'BLE MR. D. R. TIWARI, A.M.

1. Smt. Nirmala Shukla,
w/o Sri D.P. Shukla.
2. Sri Tribhuvan Shukla,
s/o Sri D.P. Shukla.
3. Sri Krishna Kumar Shukla,
s/o Sri D.P. Shukla.
4. Sri Ramanand Shukla,
s/o Sri D.P. Shukla.
5. Sri Keshwar Nand Shukla,
s/o Sri D.P. Shukla
All R/o 28/10/R Factory Estate OCF,
Shahjhanpur, U.P.Applicants

(By Advocate Shri K.C. Saxena)

Versus

1. Union of India,
through Secretary,
Ministry of Defence,
New Delhi.
2. D.G.O., D.F. Board, Calcutta.
3. G.M., D.C.R., Shahjahanpur.

.....Respondents

(By Advocate K.M. Srivastava)

(D.S.P.)

(A)

ORDER

PER JUSTICE S. R. SINGH, VICE-CHAIRMAN

While the deceased employee Late D.P. Shukla was working as Assistant Supervisor (Canteen), the Supervisor (Canteen) Sri K.K. Gupta retired from service on superannuation w.e.f. 31.07.1993. By order dated 30.07.1993, the deceased employee Late D.P. Shukla was allocated the duties of Supervisor (Canteen) on superannuation of Sri K.K. Gupta w.e.f. 31.07.1993.

The order reads as under:

"Consequent upon Sri K.K. Gupta, Supr. Canteen being superannuated on 31.07.1993 Sri D.P. Shukla Asstt. Supervisor will take over charge of the Canteen.

proper handing/taking over be done."

2. The full charge of Canteen was taken by the deceased employee on 31.07.1993 itself as would be evident from Annexure A-3 to the D.A. The deceased employee staked his claim for pay in the grade of Supervisor from 01.08.1993 to 30.06.1997 and also for re-fixation of his pension in the grade of Rs.1200-30-1440-E.B.-30-1800 as well as other retiral benefits. The representation filed by the deceased has been rejected by the impugned order dated 04.10.1996, communicated to the deceased employee vide letter dated 09.01.1997. The order dated 04.10.1996 as extracted in the letter dated 9.1.1997 reads as under:-

"As per Govt. of India DOPT D.M. No.4/2/89 Est. (Pay-II) dated 11.8.1989 reproduced as G.I. decision no.3 below FR 49 IN Swamy's Compilation of FRSR it clearly specifies that grant of charge allowance will be made/allowed if an officer is required to discharge all the duties of the other post including statutory duties e.g. exercise of powers desired from of Parliament under various Articles of Constitution such as FRs, CCS (CCA) Rules, CSOS OFARC etc. then steps should be taken to process the case for getting the approval of competent authority and formal orders appointing the officer to the additional post issued

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on appointment. The officer should be allowed additional remuneration under article of 165 of CSR. Where an officer is required only to attend the usual routine day to day work of non-statutory nature attached to the post, he is not entitled to any additional remuneration as per the Govt. of India DOPT order Supra all pending cases are disposed off accordingly."

3. Sri D.P. Shukla died during the pendency of this O.A.. The question that arises for consideration and determination is as to whether the legal heirs of deceased are entitled to pay admissible to the post of Supervisor (Canteen) as per the stipulation contained in FR 49(i), as submitted by the learned counsel appearing for applicants or they are not entitled to pay admissible to higher post of Supervisor (Canteen) in view of the guidelines no.3 of F.R. 49(iv) relied on Km. S. Srivastava, learned counsel appearing for the respondents. FR 49 empowers the Central Government to appoint a Govt. 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 Govt. In such cases, the pay of the Govt. servant 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) XXX XX XX XX

(iii) XXX XX XX XX

(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.8000/-."

4. The deceased employee in the instant case was given full charge of Supervisor (Canteen) and he performed the

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duties of Supervisor (Canteen) in addition to his own duties as Assistant Supervisor (Canteen) and in that view of the matter, he was entitled to pay admissible to the post of Supervisor (Canteen), in the absence of ^{an} order by the competent authority reducing his officiating pay under Rule 35. No order was passed by the competent authority under Rule 35 reducing officiating pay of the deceased employee. The order rejecting the representation filed by the deceased employee simply reiterated the workings of DOPT O.M. No.4/2/89/Est. (Pay-II) dated 11.8.89 reproduced as G.I. decision no.3 below FR 49. The competent authority does not appear to have addressed itself to the basic question whether the G.I. decision no.3 below FR 49 was attracted to the facts of the case. G.I. decision no.3 appended under FR-49 simply lays down the guidelines to be followed while considering the question of appointment to another post. Condition no.(i) provides that when an officer is required to discharge all the duties of the other post including the statutory functions then steps should be taken to process the case for getting the approval of the competent authority and formal orders appointing the officer to the additional post should be issued and on appointment, the officer should be allowed the additional remuneration as indicated in FR.49. The condition no.(ii) visualized that 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 office order may be issued clearly stating that the officer will be performing 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. It is, thus, evident that the G.I. decision no.3 and for that purpose, the DOPT O.M. dated 11.8.1989 simply lays down the guidelines to be followed while considering the

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question of entrusting additional charge of another post to an officer and the officer to whom the additional charge is entrusted would not be denied the pay admissible to the higher post. The deceased employee, as stated (Supra), was given the full charge of the post of Supervisor (Canteen) and he performed the duties attached to the said post. There is nothing on record to show that the Supervisor (Canteen) had any statutory duty and as such the statutory duties were not actually performed by the deceased employee while holding the charge of Supervisor (Canteen). In the circumstances, therefore, the denial of pay admissible to the post of Supervisor (Canteen) to the deceased employee was illegal and arbitrary. The view we are taking finds support from the decision of Hon'ble Supreme Court in the case of Selvaraj Vs. Lt. Governor of Island Post Blair & Others reported in JT 1998 (4) SC 500.

5. In the result, O.A. succeeds and is allowed. The impugned order dated 04.10.1996, communicated to the deceased employee vide letter dated 09.01.1997, is quashed. The respondents are directed to work-out the pay in the scale admissible to the post of Supervisor (Canteen) from 1.8.93 to 30.6.97 and pay the difference to the legal heirs of the deceased employee namely D.P. Shukla and in case he had retired as Supervisor (Canteen), his post retiral benefits shall also be re-fixed in that scale in accordance with law. The arrears of post retiral benefits shall also be paid to the legal heirs of the deceased employee within a period of four months from the date of receipt of copy of this order. Parties are directed to bear their own costs.

D.P.
Member-A

P.C.
Vice-Chairman