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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Registration No.41 of 1986 (T)

Union of India Applicant

Versus

Shri P.L. Taneja Respondent.

Present: 1. Hon. S.Zaheer Hasan, VC(J)
2. Hon. Ajay Johri, Member (A)

Judgement delivered by Hon. Ajay Johri, Member (A)

This is a Civil Appeal No. 318 of 1982 received on transfer from the Court of District Judge Bareilly under Section 29 of the Administrative Tribunals Act 13 of 1985.

2. The appeal is against the judgement and decree of Additional Munsif VIII Bareilly dated 22.9.82 passed in suit No. 66/82 P.L.Taneja Versus Union of India. The suit was decreed in part for dues from 11.11.70 to 10.1.71 and from 1.6.71 to 26.4.72.

3. The grounds of appeal are that plaintiff respondent only performed duties of DCWE for period 11.1.71 to 31.5.71 in addition to his own duties and was not entitled to any other payment. He performed duties for such time in the hours each day in addition to his work, and allowance permissible has been paid to him. Provisions of Rule 162 of Civil Services Manual were not applicable to him. There was also no notice under Section 80 of the Civil Procedure Code and it is barred by limitation, and issues were not framed properly by the trial court.

3. The plaintiff respondent in his cross objection has claimed for reimbursement on the basis of full duties and not current duties as decided by the lower court because Article 88 of the Civil Service Rules clearly laid down

that a person performing current duties cannot exercise statutory powers, they can only be exercised by a person performing full duties and he was given authority to exercise statutory powers vide paper 29C of 25.4.71.

He also performed outstation duties which could not be allowed to a person looking after only current duties.

The plaintiff respondent retired on 13.2.74 as Asstt. Executive Engineer. His case is that he was entrusted the extra duties of D.C.W.E. Bareilly from 11.11.70 to 26.4.72 and became entitled to higher pay and allowances according to Rule 162 of Civil Services Manual. His claim was not allowed on the point that the duties discharged could not be termed and regarded as full time but were current duties / 2 hours per day and they did not cover period from 11.11.70 to 26.4.72 but only from 11.1.71 to 31.5.71 for which the plaintiff respondent has been paid.

4. The defendant appellant has avered in his written statement in the Suit that the plaintiff respondent performed the duties ^{3h} of D.C.W.E. for a period of 11.1.71 to 31.5.71 which was approved by the Govt. vide their letter of 21.12.74. Such officiating arrangements are made with the approval of the Govt. For the period onwards of 1.6.71 he only officiated for two hours and no approval of Govt. was given and since he did not perform full duties he was not entitled to any extra allowance as claimed by him. These arrangements were made due to the incumbent of the post of D.C.W.E. having fallen ill on 10.11.70. The incumbent joined on 1.6.71 and again went on leave from 12.7.71 to 4.9.71 ^{3h then from} and ^{3h period} 13.9.71 to 16.10.71 during which the plaintiff respondent again officiated for two hours daily. Finally

the new incumbent took over on 24.4.71 when the officiating arrangement ceased.

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5. The learned munsif has analysed the ~~the~~ issue of duty period of the plaintiff respondent consequent to the falling sick of the holder of the post of D.C.W.E. on 10.11.70. Paras 6 & 7 of the written statement clearly mention this fact. The plaintiff respondent was then asked to carry out the duties of that post. Official orders were given to him on 28.12.70 (paper 49 Ka). The order reads that " In the absence of Shri D.P. Chaudhry DCWE E/M sick in hospital Sree P.L.Taneja AEE E/M of G.E. Bareilly will carry out the duties of DCWE E/M in addition to his own duties with immediate effect till further orders." This was subsequently amended on 25.4.71 to read that Shri P.L.Taneja AEE E/M of G.E. Bareilly will perform the current duties of the vacant higher post of DCWE E/M Bareilly involving grant of increased financial statutory/and administrative powers in addition to his own duties with immediate effect till further orders."

6. In both the original order of 28.12.70 and the amendment of 25.4.71 the date from which the petitioner was asked to perform the current duties/ duties of the post of DCWE E/M Bareilly has not been mentioned. Those orders only say 'with immediate effect till further orders'.

7. There is another letter (31/L) dated 5.3.75 which is addressed to the petitioner by the ADm Officer CUE saying that the proposal for grant of charge allowance w.e.f. 11.11.70 was received by the Ministry on 11.1.71, as such the charge allowance was granted

from 11.1.71 to 31.5.71. Sanction for further period from 1.6.71 to 26.4.72 has not been agreed by higher authorities as the petitioner ceased to officiate on 1.6.71 on the reporting of Shri D.P.Choudhry. According to this letter the petitioner was thereafter verbally directed by CWE Bareilly to work for two hours daily on working days to clear papers during Shri Chowdhry's further medical leave till the new incumbent Shri Girdhar reported for duty. This letter clarified that such short term local arrangements do not make one eligible to claim officiating allowance.

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8. A check list (34/L) for officiating arrangements in respect of the petitioner was sent by the office of CWE Bareilly to Chief Engineer Lucknow. This was sent on 2.3.71. The important details of this check list are -

1. The petitioner is senior most at the station.
2. The duration of vacancy was from 28.12.70 upto 13.4.71 till when Sri Chowdhry had been recommended medical leave.
3. Duties are carried out in addition to his own by the petitioner.
4. Due to increased work load the officer cannot be appointed to be incharge of routine duties in addition to his own.
5. Additional allowances admissible.
6. Current and full duties of the vacant higher post.

9. There is another communication dated 5.2.72 where the petitioner's designation is shown as AEE, AGE/E/M Bareilly asking him to hand over charge on 9.2.72 and

report on 10.2.72 to officiate as DCWE E/M.

10. The learned Munsif has taken the date of falling ill of Sri Choudhry as intimated in para 6 & 7 of the W.S. as the date of start of officiating arrangement. The orders given to the petitioner do not indicate any date as brought out in para 5 above. The duration of vacancy in the check list has been shown to start from 28.12.70 while Shri Choudhry fell ill on 10.11.70. 28.12.70 is the date when Shri Choudhry was admitted to the hospital. The letter of 5.3.75 (31/C) mentions 11.11.70.

~~31~~ ~~leave from the date of incident and oversight cannot be entirely ruled out~~

~~31~~ The sanction for officiating arrangement was conveyed by the letter of 21.12.74 (50 Ka) under Article 165 CSR for the period 11.1.71 to 31.5.71. The detail of travelling duties performed by the petitioner as DCWE shows the first tour of duty as on 15.11.70 to Kanpur. It can be safely concluded that the petitioner started officiating from the day immediately after Shri Choudhry fell ill i.e. 11.11.70 as arrived at by the learned Munsif. There is no dispute about the date of cessation of the officiating arrangement i.e. 26.4.72.

11. In between Shri Choudhry rejoined on 1.6.71 and again went on leave from 12.7.71 to 4.9.71 and ³¹ ~~after~~ ^{another short spell} again from 13.9.71 onwards till he reported at the Army Hqs. 37/C of 24.12.71 says that since Shri Choudhry has not yet reported the petitioner would continue to officiate till the arrival of new incumbent. The

learned munsif has wrongly interpreted that the petitioner continued to officiate throughout the period. After 13.9.71 Shri Chowdhry had to return but since he did not return the petitioner continued to officiate. The breaks between 1.6.71 and 11.7.71 and 5.9.71 and 12.9.71 have not been disputed by any evidence. As a matter of fact the petitioner has admitted in his statement that Shri Chowdhry joined duty on 1.6.71, but he was not fit to discharge his duties hence the petitioner continued to work. If Shri Chowdhry had reported and joined duty on 1.6.71 the officiating arrangement ceased. It is another matter that because of the condition of Shri Chowdhry the petitioner may have looked after his work ^{at to assist him} too. But two persons cannot be posted against one post and the arrangement ~~xxxx~~ can best be taken as one of mutual arrangements between the two of them for which the petitioner can also not be paid alongwith Shri Chowdhry. The petitioner has also denied knowledge of the periods when Shri Chowdhry remained on duty after his initial sickness (page 8 of his statement at 25/B). Hence the petitioner discharged the duties in the following spells :-

11.11.70 to 31.5.71

12.7.71 to 4.9.71

13.9.71 to 26.4.72

12. The post of DCWE is a senior scale class I post. The petitioner was AEE and he was put to officiate. The order shows that he was asked to look after the current duties. He was also asked to exercise financial statutory powers. After 31.5.71 his officiating arrangement was not sanctioned by the army Headquarters. The sanction for period prior to 11.1.71 was not given on

the plea that the proposal was received in Army HQrs on 11.1.71. This argument is not understandable. If the officer officiated he was entitled to be sanctioned the arrangement for the period he performed. How can an arbitrary position be taken that the sanction would be only from the date of receipt of the proposal in the office of the approving authority. If he performed current duties upto 31.5.71, the work load and situation did not suddenly change thereafter so that only 2 hours of work was required to be done. If it was so the post was perhaps not justified. Moreover it is a long period of about 9 months during which the petitioner ^{ab continued to} discharged the functions of DCWE E/M. He also toured outside his headquarters for which his claims must have been sanctioned. We, therefore, find no reason to differ from the findings of the learned Munsif that the petitioner continued to perform current duties and so was entitled to charge allowance. The only difference will be that periods will be as shown in para supra i.e. from 11.11.70 to 31.5.71, 12.7.71 to 4.9.71 and then from 13.9.71 to 26.4.72.

13. Let us examine Articles 88, 162 and 165 of the Civil Service Regulations. For better appreciation these Articles are produced below :-

Article 88: It is also permissible instead of appointing an officer to officiate to appoint him to be incharge of the current duties of the vacant appointment. In such cases a 'charge allowance' is given as explained in Article 94, 95, 165 to 169A and 174A.

Article 162: The Central Government mayappoint one officer to hold substantively as a temporary measure or to officiate in two or more independent appointments at one time. In such cases, the emoluments are regulated as follows :-

- (i) He draws the highest salary to which he would be, entitled if he held or, as the case may be, officiated in, any one of the appointments alone.
- (ii) For the other appointments or appointments he draws such allowance as the Central Government may fix, not exceeding for each appointment half the salary which he would draw if he held, or as the case may be, officiated in it, alone.
- (iii) Provided that his aggregate salary shall not exceed the pay which he would draw in the most highly paid of the appointment if he held it substantively and alone.

Article 165: An officer appointed to be in charge of the current duties of an office in addition to his own duties may, if the charge in the opinion of the Central Government entails a substantial increase of responsibility and some additional work, be granted a charge allowance, to be fixed by the Central Government, not exceeding one tenth of the pay of the office; provided that if the office is open to, and may in practice be held by a.....Military Officer the allowance shall not be less than Rs.100/-.

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14. According to the Govt. of India, Ministry of Finance memo No.F.7/14/61-Ests-V(A) dated 24.1.63 an officer appointed to perform the current duties can exercise administrative or financial powers vested in full fledged incumbants of the post but he cannot exercise statutory powers. The petitioner was, under the letter of 25.4.71 (paper 29C), sent a regular order amending the

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order of 28.12.70 asking him to perform current duties of the vacant post involving grant of increased financial and administrative powers. The word 'statutory' does not seem to be correctly used as, if it was meant that he was to exercise the statutory powers also as envisaged in Article 88, the order should have read "increased financial, statutory and administrative powers". In any case in view of the very specific ³⁶ mention that he was to perform the current duties there was no question of his exercising the statutory powers as defined in the Ministry of Finance letter of 24.1.63. He has also not brought to our notice any such function that he performed. Statutory powers are normally those derived direct from an act of Parliament and this would apply more ³⁶ to Classification Control and Appeal Rules and Delegation of Power Rules. The petitioner therefore did not perform the statutory powers as enjoined in these rules.

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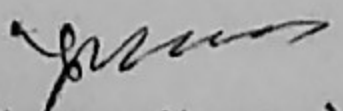
15. Article 162 permits an officer to hold substantively as a temporary measure or to officiate in 2 or more independent appointments at one time. It does not apply to the case of an officer discharging the duties of more than one appointment in the same office or the same establishment. The petitioner, if what the respondents say is taken as the correct was allowed to ~~XX~~ look after the work of the DCWE for 2 hours per day. This could be only possible if the appointment was in the same office or in the same establishment. Therefore Article 162 does not apply in this case.

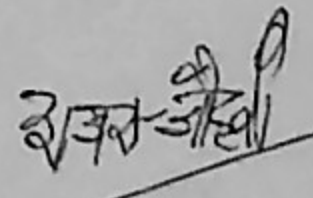
16. According to Article 165 an officer appointed

to look after current duties is only granted a charge allowance which is fixed by the Central Government and it does not exceed one ³⁴tenth ^{pay} of the office. This Article ³⁴is ~~therefore that should apply to the petitioner and~~ has been correctly applied by the Ministry of Defence in their sanction of 21.12.74 (Paper 27C).

17. The petitioner therefore looked after only current duties of the post of DCWE between the periods 11.11.70 to 31.5.71, 12.7.71 to 4.9.71 and 13.9.71 to 26.4.72 and is entitled to the charge allowance for these periods.

18. The learned Munsif has already covered the period from 11.11.70 to 10.1.71. He has already been paid from 11.1.71 to 31.5.71. The order of the learned Munsif is partly modified for the remaining period in terms of the para supra. The appeal is dismissed. Parties will bear their own costs.


(S. Zaheer Hasan)
Vice Chairman(J)


(Ajay Johri)
Member (A)

RKM

Dated the 2nd Sept., 1986.