

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

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Original Application No. 174 of 1992

D.K. Yadav

Applicant

Versus

Union of India & others

Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

Whether the Fundamental Rule 49 (i) or Rule 49 (iii) will apply is the main question to be decided in this case. There are two Sub-Divisionals Head Quarters at Mainpuri, One is held by Assistant Sub-Post Office and the other by S.D.I. The Post of A.S.P.Os is of higher grade in the same line of promotion. The Post of A.S.P.Os (Head quarter) stationed at Mainpuri is also available in Divisional Office to assist the Superintendent. The post of A.S.P.Os (Head quarters) and A.S.P.Os Sub-Division are of equal status but are higher to S.D.I. in the same line of promotion. One Shri M.B. Bajpai A.S.P.Os was promoted and transferred vide Additional P.M.G. Knapur Memo No. StaffTrf/SPOCH . III dated 3.8.1987 and one Shri R.L. Prasad was posted in his place. In order to relieve Shri M.B. Bajpai, the applicant^{who} was S.D.I. Mainpuri Sub-Division was ordered to work as A.S.P.Os Sub-Division vice Shri Bajpai. The appointment letter indicates that the applicant Shri D.K. Yadav S.D.I. Mainpuri was ordered to work as officiating A.S.P.Os (HQ) Mainpuri Division purely on temporary and adhoc basis till further orders. He will also look after the work in his own sub divisions in addition to the charge of A.S.P.Os Sub-Division. The applicant held the additional charge of the lower post from 24.9.87 to 21.1.88 till the said Shri R.L. Prasad joined. The said R.L. Prasad A.S.P.Os was granted leave from 20.6.88 to

1.7.88 ^{but} ~~by~~ the applicant was ordered to hold charge of A.S.P.Os Sub-Division in addition to his own work and worked on both the posts from 18.6.88 to 5.7.88. One Shri K. L. Shakya A.S.P.Os (Head Quarter) was transferred and applicant who was also working as A.S.P.Os Mainpuri Sub-Division in leave arrangement was ordered to work as A.S.P.Os Head Quarter, Mainpuri and to look after the work of Mainpuri Sub-Division (S.D.I.) the lower post in addition and this arrangement was continued from 28.6.88 to 31.10.88. The applicant's grievance is that he was not paid the emoluments and allowances which he is entitled to.

2. According to the respondents he was ~~placed at~~ a higher cadre admissible to him as per FR-49 (i) during the spells. During the first spell both Sub-Divisions were kept in the one and the same office while in the second spell the applicant was promoted to the post of A.S.P.Os (Head quarter) purely on temporary basis and was asked to look after the work of S.D.I. Sub-Division, Mainpuri.

3. The applicant requested for sanction of additional pay under the provisions of Fundamental Rule 49 (iii) and his application was forwarded but no decision on the same has yet been received. According to the applicant as he worked in two offices and it may be a promotion to a S.D.I. and as he worked as S.I. in one offices and ~~but~~ his cadre was A.S.P.Os the applicant is covered by Fundamental Rule 49 (iii) and not Fundamental Rule 49 (i). The fundamental rule 49 (1) & (iii) which reads are as under :-

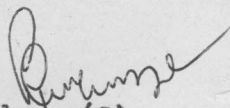
1. "Where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher 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 the lower post.

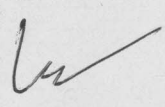
(iii) "Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/ line of promotion, he shall be allowed the pay of the higher posts or of the highest post if he holds charge of more than two posts, in addition to 10% of the presumptive pay of the additional post ~~or posts~~ 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 period of 3 months.

4. As per admission of the respondents, there were two Sub-Divisions and when the charge of A.S.O. Os Sub-Divisions and S.D.I. is held by the one and same person it should be deemed to be in the same office. The post of A.S.P. Os Head quarter Mainpuri are of the one and same cadre.

5. According to the respondents, in the first spell the applicant was required to hold charge of S.D.I. Mainpuri Sub-Division in addition to the charge of A.S.P. Os Sub-Division offices and both the post were kept in the same office and he held charge of last post in addition but in the next spell the applicant worked as A.S.P. Os Sub-Division in addition to his own duties. The Official also held the charge of A.S.P. Os Head quarter although he was S.D.I. in the Mainpuri Sub-Division and in the third spell also he worked as A.S.P. Os Head quarter, while he was also required to look after ~~the~~ work of his own sub-Division. As far as the first spell is concerned it may be that the both offices were held by applicant in the first office. Thus, so far whether two spells are concerned, the case of the applicant appears to be ^{on} sound footing but of course he worked in the two offices. ^{the} As ^{has} matter ^{drawn} ~~is~~ still again ~~the~~ attention of the higher authority, the representation has not been disposed of. No final opinion in this matter is expressed. The respondents

directed to dispose of representation filed by the applicant within a period of 2 months from the date of communication of this order, taking into consideration the facts ^{that} the applicant in the first spell worked in one office and second spell worked in different office. If it is held that Fundamental Rule 49 (iii) is applicable the benefit of same will be given to the applicant. No order as to costs.


Member (A)


Vice-Chairman

Allahabad

Dated : 15/2/83

(g.s.)