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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION No. 449 OF 1993

Date of decision: 30, April, 1993

Shri Tarini Prasad Das ... Applicant

Versus

Union of India and others ... Respondents

For the Applicant ... M/s J.Patnaik,  
Pradip Mohanty,  
B.P.Ray,  
H.M.Dhal,  
Advocates.

For the Respondents ... Mr.K.C.Mohanty,  
2&3 Government Advocate (State)

For the Respondent No.1.. Mr. Akshya Kumar Misra,  
Additional Standing  
Counsel (Central).

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CORAM:

THE HONOURABLE MR. K.P.ACHARYA, VICE CHAIRMAN

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1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporters or not?  No.
3. Whether His Lordship wish to see the fair copy of the judgment? Yes.

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JUDGMENT

K.P.ACHARYA,V.C.

In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the orders contained in Annexures 5 and 6 and to direct the Opposite Parties to sanction and pay the additional pay to which the petitioner is entitled for the period he was in full charge of the post of A.I.G. (Planning) in addition to his own duties as A.I.S. (Supply).

2. Shortly stated the case of the petitioner is that he is a member of the Indian Police Service and while he was functioning as Assistant Inspector General of Police (Supply), he was directed to remain in full charge of the duties and responsibilities of the Assistant Inspector General of Police (Planning) with effect from 14-10-1988. The petitioner made a representation addressed to Opposite Party No. 3 i.e. the Director General of Police for recommending <sup>to</sup> the State Government to pay to the petitioner an additional pay including the Additional Special Pay which is carried <sup>with</sup> to the post in question. Ultimately, the State Government ordered that since

the petitioner was holding full charge of a post in the same rank and in the same office, question of payment of additional pay to the petitioner does not arise. This order is contained in Annexure-5. Hence this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that the petitioner remained in charge of A.I.G. (Planning) in addition to his own duties as A.I.G. (Supply) and since both the posts are in same rank and attached to the same office namely the office of the Director General of Police, Rule 96 of the Orissa Service Code creates a bar for sanction of additional pay in favour of the petitioner and therefore, the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. J. Patnaik learned counsel for the petitioner, Mr. K.C. Mohanty learned Government Advocate for the State of Orissa (Opposite Party Nos. 2 and 3) and Mr. Akshya Kumar Misra learned Additional Standing Counsel (Central) for the Opposite Party No. 1 on the merits of this case.

5. The admitted position is that the petitioner had been ordered to remain in full charge of the post of A.I.G.(Planning) in addition to his own duties as A.I.G.(Supply) and he functioned as such in both the posts for more than 15 months. No doubt, the Director General of Police had recommended vide letter dated 6th February, 1990, contained in Annexure 7 that the petitioner cannot be termed as temporary holding of full charge of two posts and that this arrangement is a regular and permanent arrangement due to dearth of I.P.S. officers of the rank of S.P. in the cadre. The duties and responsibility of both the posts are also separate, well defined and a full time affair. Although both the posts are attached to the same office, the nature ~~of~~ duties and responsibilities of each is totally different and not related with each other. Despite this recommendation, vide Annexure-8 dated 8-5-1990, the request of the petitioner for grant of additional pay was turned   
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down by the Government. During the course of argument advanced by Mr. Patnaik learned counsel appearing for the petitioner, it was submitted that once it has been held by the Directors of General of Police that both the posts are separate from each other and the nature and duties of both the posts are well defined, one having no relation with other, the Government ought to have sanctioned the additional pay to the petitioner. In this connection Mr. Patnaik relied on Rule 96 of the Orissa Service Code whereas it was contended by the learned Government Advocate, Mr. Mohanty and Mr. Misra learned Additional Standing Counsel that Rule 96 of the Orissa Service Code read with Rule 99(3) of the companion to service code and T.A. Rules creates a bar for grant of additional pay. Rule 99(3) of companion to service code and T.A. Rules provides as follows :-

"Rule-99(3) Additional pay will not be admissible to an officer, who discharges the duties of more than one appointment in the same office or in the same Establishment, or when the posts are directly

and completely one above the other. In such cases the officer will draw the highest pay including the Spl. Pay to which he would be entitled if he officiated in one of the posts alone, and to nothing more.

An Under Secretary discharging the duties of a fellow Under Secretary in the same Office or Department as well as his own.

A Joint Magistrate or an Asst. Superintendent of Police, appointed in addition to his own duties to officiate respectively as District Magistrate or Superintendent of Police of the District. In this case he gets pay only as officiating Magistrate or officiating Superintendent of Police. A District Judge deprived of the help of an Additional or Asst. Judge and therefore, doing the Additional or Assistant Judges work.

A Joint Magistrate doing the work of a second joint Magistrate in the District as well as his own.

A Subordinate doing the work of another subordinate in the same office e.g. a clerk discharging the duties of one or more clerk in the same office. In this case, he will draw his substantive pay only unless any one of the posts which he holds is one to which acting promotion would be admissible. In that case he will draw the pay which would be admissible to him for officiating in such post and nothing more".

Rule 96 of Orissa Service Code provides as follows:

"Rule 96 of Orissa Service Code:- The pay of Government Servant appointed by the State Government to hold substantively as a temporary measure or to officiate in two or more independent posts at one

time shall be regulated as follows:-

(a) The highest pay to which he could be entitled if his appointment to one of the posts stood alone, may be drawn on account of his tenure of that post.

(b) For each other post he may draw such reasonable pay, in no case exceeding half the presumptive pay (excluding overseas pay) of the post, as the State Government may fix; and

(c) If a compensatory allowance is attached to one or more of the posts he may draw such compensatory allowance as the State Government may fix, provided that such allowance shall not exceed the total of the compensatory allowance attached to all the posts".

From the provisions contained in Rule 99(3),

Additional pay will not be admissible to an officer who discharges the duties <sup>of</sup> more than one appointment in the same office or in the same establishment. Undisputed position is that both the posts are attached to the office of the Director General of Police. Both the posts may carry different duties and responsibilities but both the posts being attached to the same office <sup>and in</sup> <sub>of</sub> the same establishment, additional pay will not be admissible.

Of course it is stated therein that in such cases, the officer will draw the highest pay including the special pay to which he will be entitled if he officiated in one of the post alone. In the

present case, there is no question of officiation.

The Petitioner was drawing the scale of pay which is prescribed for a Member of the Indian Police Service. The Petitioner was not officiating in either of the posts in question. He had remained in full charge of the post of A.I.G. (Planning) which does not carry a higher pay than the post which he was substantively holding as AIG (Supply). Therefore, rightly certain examples have been given under Rule 99(3) of the Orissa Service Code which which completely fits <sup>in</sup> with the case put forward by the Opposite Parties.

6. Similarly in order to attract the provisions in Rule 96 of the Orissa Service Code, the officer concerned, in order to be entitled to the additional pay with certain limitation<sup>s</sup> must hold the post substantively as a temporary measure or officiate in two or more independent post at one time so that his pay will be regulated according to the critaria laid down against Sl. Nos. A, B and C. The petitioner was never appointed to officiate in the post of A.I.G. (Planning). He was asked to remain in full charge of the post. Therefore, Rule 96 of the Orissa

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Service Code will also have no application to the case of the petitioner. In such circumstances, I find no merit in this application which stands dismissed leaving the parties to bear their own costs.

*K. Mohanty*  
30.4.93  
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VICE CHAIRMAN

Central Administrative Tribunal  
Cuttack Bench, Cuttack/K. Mohanty  
April , 1993.

