



13

13

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 374 OF 1998
Cuttack this the 26th day of May, 2000

Dr. Lalmohan Satpathy

...

Applicant(s)

-VERSUS-

Union of India & Ors.

...

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

(Signature)
(SOMNATH SOM)
VICE-CHAIRMAN

(Signature)
(J. S. DHALIWAL)
MEMBER (JUDICIAL)

14

M

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.374 OF 1998
Cuttack this the 26th day of May, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

THE HON'BLE SHRI J.S.DHALIWAL, MEMBER (JUDICIAL)

...

Dr. Lalmohan Satpathy,
aged about 55 years,
working as Superintendent Random
Sample P.P.T.C., At: Poultry Breeding
Farm, Nayapali,
Bhubaneswar

...

Applicant

By the Advocates

Mr. D.N. Mishra

-VERSUS-

1. Union of India represented
through its Secretary, Department
Animal Husbandry and Dairy,
At: Krushi Bhawan
New Delhi
2. The Director,
Central Poultry Breeding Farm
At: Nayapali, Bhubaneswar
District : Khurda
3. The Pay & Accounts Officer
Department of Agriculture & Cooperation
Rajaji Bhawan, G.I. - Block A
Basant Nagar, Chennai - 90

...

Respondents

By the Advocates

Mr. S.B. Jena,
Addl. Standing Counsel
(Central)

...

2
O R D E R

MR. J. S. DHALIWAL, MEMBER (JUDICIAL): Dr. Lalmohan Satpathy, after being redeployed in Central Poultry Breeding Farm under the Department of Agriculture has been working as Veterinary Officer under orders dated 29.2.1998 in the scale of Rs. 2000-3500/-. He pleads that on 28.2.1990 he was given additional charge of Asst. Director with the following terms (Annexure-1):

" Dr. L. M. Satapathy, Veterinary Officer, Central Poultry Breeding Farm, Bhubaneswar is hereby requested to look after the duties of Asst. Director, Central Poultry Breeding Farm, Bhubaneswar and remain in charge in addition to his own duties until further orders".

He continued performing the duties of Assistant Director, but he was not given the scale of the post of Asst. Director which was Rs. 2200-400/-. While working as Asst. Director he received another order dated 29.10.1992 (Annexure-2) which is reproduced below :

" With approval of the competent authority in this Department it has been decided to give current charge of the post of Director, Central Poultry Breeding Farm, Bhubaneswar to Dr. L. M. Satpathy, Vety., Officer, Central Poultry Breeding Farm, Bhubaneswar w.e.f. 1.11.1992 (Fore-noon).

Dr. Satpathy will also be Head of Office and D.D.O. in respect of Central Poultry Breeding Farm, Bhubaneswar".

The applicant continued performing the work of Director with delegated powers of Drawing and Disbursing Officer. The post of Director carries the scale of pay of Rs. 3000-5000/-. Even this scale was not given to him. Claims that he was directed to work as Assistant Director on adhoc basis in the scale of Rs. 2200-4000/- vide Office Order dated 18.2.1994. While performing his duties as Asst. Director, he received another order dated 15.11.1994 (Annexure-3) which is to the following effect.

" With the approval of the Competent Authority it has been decided to give full-time current charge of the post of Superintendent, R.S.F.P.T.C., Bhubaneswar

with immediate effect and until further orders.

Dr. Satpathy shall take charge of the post of Superintendent from Dr. A.C. Kanhar.

Dr. Satpathy shall act as Head of Office and Drawing & Disbursing Officer in respect of R.S.F.P.T.C., Bhubaneswar".

While working as Superintendent, which he claims is a post equivalent to the post of Director, he filed O.A. 666/94 before the Bangalore Bench claiming the scale of Rs.2200-400/- on the averments that One Dr.D.B.Sharma though working on adhoc basis was being paid the scale of the higher post. The Bangalore Bench allowed the plea of the applicant in that case. Animal Husbandry Department issued an order on 19.4.1995 reverting the applicant from the post of Assistant Director to that of Veterinary Officer and the applicant challenges this order on the ground that it amounts to reversion. His pay was however not reduced. Claims that while working as Superintendent, R.S.F.P.T.C., Bhubaneswar he was not given the scale of Rs.3000-4500/- (Old Scale), but was paid the scale of pay of Veterinary Officer even though he had made representation (Annexure-4). After acceptance of recommendation of 5th Pay Commission the scale of pay of Veterinary Officer has been fixed at Rs.8000 - 13,500/- for those persons who fulfill the requirement as laid down by the Veterinary Council of India. Pleads that he fulfilled those qualifications and was eligible for the said scale of pay. Annexure-5 issued by the Ministry also indicates this scale of pay w.e.f. 1.1.1996. Applicant has been allowed this scale of pay, but without any rhyme or reason Res.2 has passed an order dated 6.7.1998 fixing the pay of the applicant at Rs.6500/- - Rs.10,500/- w.e.f. 1.1.1996 (Annexure-6). He has thus prayed for a direction to respondents for the following reliefs.

- 1) Pay the petitioner from the date of holding the post of Director, i.e. 1.11.1992 till 1994 when the applicant

was posted as Superintendent R.S.F.P.T.C..

- ii) Pay the Superintendent scale of pay from November 1994 till date
- iii) Pay the pay scale of Asst. Director from 1990 till date, i.e. Old scale Rs. 220 - 4000/- (i.e. pre revised scale) by Rs. 8000 - 13,500/-
- iv) Any other order/orders as deemed fit and proper may be passed.

Applicant's claim is based on the provisions of F.R. 49.

2. Respondents contest the case of the applicant pleading that he is not entitled to certain reliefs on account of Law of Limitation and also for the reason that his representation has not yet been decided. It is pleaded that the applicant was by mistake allowed scale of Rs. 8000 - 13,500 and this fact was detected by the present Director and mistake was rectified (Annexure-R/1). He was competent to pass this order. Applicant was not given regular promotion to the post of Asst. Director/ Director/Superintendent, R.S.F.P.T.C. As his own designation is Veterinary Officer, he is entitled to normal scale of this post. His services were only spared to function as Superintendent R.S.F.P.T.C. temporarily till alternative arrangement is made. He has not been regularly selected through the selection process under the rules and that he is only handling the charge due to local arrangement. They do not dispute the passing of the orders at Annexure-1, 2 and 3, but mention that applicant was requested by Res. 2 to hold the additional charge of Asst. Director. Since his substantive designation is that of Veterinary Officer till to-day, giving him additional charge of Group B post does not make him eligible for payment of scale of pay for the post of Asst. Director, as appointment to the post of Asst. Director is handled by the Administrative Ministry through U.P.S.C. Since it was a local arrangement they deny the claim of the applicant

for pay and allowance of the higher post. Similarly regarding his functioning against the post of Director mention is to be only local arrangement. Even the delegation of powers like Drawing and Disbursing Officer while performing the duties of Director do not make him entitle to pay and allowances of the higher post. Even recruitment to the post of Director is made through U.P.S.C. as it is a Group A scale post. They admit that he was given additional charge of the post of Asst. Director and was thereafter given promotion to this post on adhoc basis for a period of one year only after which he was reverted back to his original post of Veterinary Officer. A Director had taken over the charge of C.P.B.F. on 25.12.1994 and the applicant after getting adhoc promotion was once again given the additional charge of the post of Superintendent, R.S.F.P.F.C. to which post he was also not regularly recruited. They plead that neither the U.P.S.C. nor the Department can regularise the service of the applicant permanently in the post of Asst. Director as it has to be filled up by selection through U.P.S.C. by way of making All India advertisement and the matter is still pending in the Ministry. They plead that by claiming scale of higher posts applicant has chosen to humiliate his higher authorities by filing the present case which attracts punishment under the Conduct Rules.

Applicant has not filed any rejoinder.

3. During pendency of the case through M.A. 345/2000, Respondents mentioned that most of the claims of the applicant are time-barred and have further mentioned that scale of Rs.8000-13,500 recommended by the 5th Pay Commission for Veterinary Officer of C.P.B.F. is made applicable as and when Administrative Ministry may issue

specific directions. Till it is done applicant is entitled to get the scale of Rs.6500-10,500/- only. As per Memo dated 11.11.1999 Director has intimated that salary of the applicant has been revised in the scale of Rs.8000-13,500/- w.e.f. 1.1.1996 (Copy of the order has been annexed).

4. Heard learned counsel for the parties and have examined the materials on the file.

5. From the pleadings of the parties one thing becomes clear that Respondents never considered the case of the applicant under the relevant provisions of the Rule and the law. F.R. 49 is a relevant provision which gives in detail as to under what situation a Central Govt. employee while holding his substantive post may still be appointed to anyother post in officiating capacity as a temporary measure in one or more or other independent post at one time. They have also given in detail as to how his pay is to be regulated as hereunder B

"F.R.49. The Central Government may appoint a Government 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 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 per cent 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 three 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 three months, the concurrence of the Ministry of Finance shall be obtained for the payment of the additional pay beyond 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.8000);
- 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".

Government of India orders have also been issued under this F.R. which deal with grant of additional pay or additional benefits. When additional charge is held by a Government servant as to whether he is authorised to perform the statutory duties of the higher post also and certain guidelines have also been provided on additional charge of the post or additional charge of the current duties of another or a higher post. We may cite judgments of the various Courts on this aspect which should be considered by the respondents as the Courts have already laid down the law regarding rights of the persons who are given

either officiating charge of a higher post or are given additional charge of another post while holding ~~their~~ own posts, which are as under :

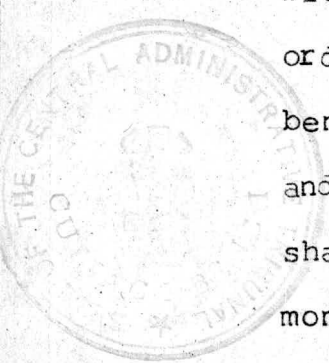
- i) Selvaray vs. Lt. Governor of Island, Port Blair (1998) 4 RSJ Page 22
- ii) Secretary-cum-Chief Engineer, Chandigarh vs. Hariom Sharma & Ors. J.T. 1998 (3) SC 654 (Para-8)
- iii) Santok Singh vs. Post Graduate Institute of Medical Science & Research 1999 (4) RSJ 61

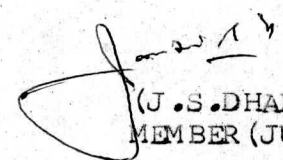
These judgments dealing with the specific question of entitlement of Government servant of additional pay and allowances were considered where he was asked to perform duties of a higher post, given charge of higher post on adhoc basis or any officiating capacity, and it was held that he could not be denied such benefits. From the ~~x~~ written reply filed by the respondents we find that the case of the applicant has not at all been examined under the relevant law as mentioned above. Reading of orders under Annexures-1, 2 and 3 shows that applicant was given duties to look after the duties of Asst. Director in addition to his own duties until further orders (Annexure-1), was given current charge of the post of Director through Annexure-2 w.e.f. 1.11.92 and was also made Head of Office and D.D.O. in respect of C.P.B.F., Bhubaneswar. Annexure-3 reads that he was given full time ~~xxx~~ current charge of the post of Superintendent, R.S.F.P.T.C. Bhubaneswar and he was to act as Head of Office and Drawing Disbursing Officer. Reading of these orders shows that he was given the duties of the posts of Asst. Director, Director and Superintendent in terms of conditions as mentioned under Annexures 1, 2 and 3. This would definitely make him entitled to some additional benefits under F.R. 49. We are not prepared to go into the details of duties performed by the applicant in different

g.

spells We dispose of this the present Original Application with a direction to respondents to reconsider the claim of the applicant for grant of benefits on account of his holding the post of Asst. Director, Director and Superintendent, R.S.F.P.T.C. in light of the provisions of F.R. 49 and in the light of the law enunciated by the Hon'ble Supreme Court and the High Court which have been discussed in the preceeding paragraph. They shall take a decision on his claim as ~~made in the~~ present O.A. within a period of 120 days from the date of receipt of this order. In case the applicant is found entitled to the additional benefits by way of pay and allowances in addition to his pay and allowance he received as Veterinary Officer, respondents shall release the same in his favour within a period of two months from taking a decision as per our directions given above.

In the circumstances of the case, there shall however be no order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN


(J.S. DHALI WAL)
MEMBER (JUDICIAL)

B.K. SAHOO//