

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

.....

O.A. No. 465 of 1994.

Thursday this the 1st day of December, 1994.

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

E.C. Ayyappan,  
Deputy Commissioner of Incometax (Appeals)  
Incometax Office,  
Race Course Road,  
COIMBATORE.

.. Applicant

(By Advocate Shri K.M.V. Pandalai)

Vs.

1. Union of India, represented by  
the Secretary to Government,  
Ministry of Finance,  
New Delhi.
2. Central Board of Direct Taxes,  
New Delhi, represented by its  
Secretary.
3. The Chief Commissioner of  
Income tax, Cochin,  
C.R. Buildings, I.S. Press Road,  
Cochin-682 018.

.. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC)

O R D E R

P SURYAPRAKASAM, JUDICIAL MEMBER

Applicant who is a Deputy Commissioner of Incometax, now working at Coimbatore, claims additional remuneration as contemplated under FR 49(iii) for the period of additional charges held by him as shown in A 2 representation. According to him, under Exbt.A1 he has been posted on transfer as Assistant Commissioner, Investigation Circle-1, Division-1 and in the

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same order he was directed to hold additional charge of Assistant Commissioner of Income Tax, Investigation Circle-2, I.T Division, Calicut and also Assistant Commissioner Incometax, Investigation Circle, Cannanore, until further orders. The applicant was discharging his duties including statutory duty for a period of 51 days from 5.2.90 to 28.3.90, in the first case (as Assistant Commissioner, Incometax, Investigation Circle 2, Calicut and the second post, he was holding as Assistant Commissioner Incometax, Investigation Circle, Cannanore was for the period from 12.2.1990 to 11.12.1991, say for about 670 days. Under Exhibit A-2, the applicant claims additional remuneration for holding the said posts for the said periods and the same was rejected under Exbt.A4 which is being questioned in the present O.A. Applicant has relied on the judgement rendered in O.A.-1153/91, O.A.-518/93 and also in O.A.-1751/93 of this Tribunal. While arguing the case, the applicant fairly conceded that with regard to the first posting for the period of 51 days, rule FR 49(iii) may not be applicable in view of the fact that Rule 49(iii) is not applicable in respect of a person who is holding the post in the same cadre, and in the same office as additional charge.

2. The next question will be with regard to the 2nd portion viz., that he was also working as additional charge as Assistant Commissioner of Income Tax, Cannanore for a longer period. This according to him is covered under FR 49(iii) which reads as follows:

"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 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; "

3. Respondents while refusing the claim stated that FR 49 (iii) will not be applicable in this case, but only FR 49 (ii) is applicable. FR 49(ii) reads as follows:

"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; "

4. In this case, rule 49(ii) specifies that a person is not eligible to get the additional claim provided two conditions are being fulfilled, one is viz.,

"that he must hold additional dual charges of the two posts one in the same cadre and the second in the same office."

In the present case, the first condition may be attracted but the second condition viz., the same office may not be there. By any stretch of imagination it may not be said that a person who is working at Calicut and also held the

additional post at Cannanore which is said to be the 2nd post, that he is holding the additional post in the same office. Therefore, FR 49(ii) is not applicable, and with regard to the position of the "same office" it has already been elaborately considered in OA-1153/91 as in Annexure A3. O A.-1751/93 is also a similar case wherein the earlier judgement O.A. 1153/91 has been followed and since both the decisions are of Bench decisions they are necessarily to be followed.

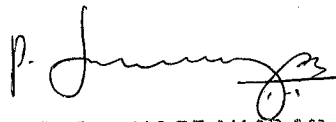
5. The next ground of opposition that has been taken by the respondent is to the effect that the applicant has not been appointed to the said post by the competent authority, but this has already been considered in the earlier case O.A.-1153/91 and wherein it has been held that this is for the department to take steps to get approval of the competent authority for the said appointment as such. That should not be a ground for denial of the benefit to the applicant who has actually worked and discharged the functions as prescribed under the statute and rules .. Respondents also submitted that the applicants holding of additional posts is not an appointment but only a deployment as mentioned in paragraph 8 of the reply statement. I am unable to accept this contention. In the circumstances of the case, A4 impugned order is quashed.

6. <sup>regard</sup> Further the claim with/to the period from 5.2.90 to 28.3.90 for holding the additional post as Assistant Commissioner of Incometax, Investigation Circle-2, Calicut made by the applicant is disallowed, and the claim with

regard to the period from 12.2.90 to 11.12.91 when he was holding the additional post of Assistant Commissioner of Incometax, Investigation Circle, Cannanore is allowed. Respondents are directed to dispose of the claim of the applicant with regard to the remuneration, in accordance with law and disburse the arrears. This shall be done within a period of three months from the date of receipt of the copy of this judgement.

7. Application is partly allowed as above. There will be no order as to costs.

Thursday this the 1st day of December, 1994.

  
P SURYAPRAKASAM  
JUDICIAL MEMBER

LIST OF ANNEXURES

Annexure A1: True copy of order dated 24.1.90 issued by the Respondent No.3.

Annexure A2: True copy of representation dated 9.11.92 of the petitioner to the 3rd respondent.

Annexure A3: True copy of judgement of this Hon'ble Tribunal dated 27-5-92 in OA-1153/91.

Annexure-A4 : True copy of order dated 18-3-93 issued by the Dy. Commissioner of Incomtax (H), Cochin conveying the decision of the 3rd respondent.