

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.15/2001

Friday, this the 1st day of June, 2001.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.Madhavan Nair,  
Commissioner of Income Tax(Appeals),  
Chennai. - Applicant

By Advocate Mr S Ananthakrishnan

Vs

1. Union of India represented by  
Secretary to Government,  
Ministry of Finance,  
New Delhi.
2. The Central Board of Direct Taxes,  
represented by its  
Secretary, New Delhi.
3. The Chief Commissioner of Income Tax,  
C.R.Building, I.S.Press Road,  
Cochin.
4. The Joint Commissioner of Income Tax(H),  
C.R.Building, I.S.Press Road,  
Cochin. - Respondents

By Advocate Mr Shri Hari Rao, ACGSC

The application having been heard on 27.3.2001, the Tribunal  
on 1.6.2001 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The short question to be answered in this case is,  
whether the impugned A-8 communication dated 22.6.2000, whereby  
the applicant's claim for additional remuneration for the post  
held by him in addition to his own regular charge was

rejected, was sustainable in law. The applicant, now working as Commissioner of Income Tax(Appeals) at Chennai is aggrieved by A-8 communication dated 22.6.2000, purported to be in response to his representation which this Bench of the Tribunal had, by order dated 15.12.99 in an earlier O.A.No.1372/99(A-7), asked the respondents to consider in the light of the rules and instructions and keeping in view the decisions of this Tribunal in O.A.227/95 and O.A.1057/95 dated 31.5.96.

2. We have heard Shri S.Ananthakrishnan, counsel for the applicant and Shri K Shri Hari Rao, counsel for the respondents.

3. Counsel for the applicant points out that the applicant, while holding the regular post of Additional Director of Income Tax(Inv.), Trivandrum, was appointed to hold additional charge of Additional Director of Income Tax(Inv.), Cochin from 1.11.95 to 15.7.96. During the same tenure, he was also ordered to hold additional charge of Deputy Commissioner of Income Tax, Trivandrum Range from 2.5.97 to 20.10.97, according to counsel. He contends that as per Rule 49(iii) of the F.Rs, the applicant is entitled to 10% of the presumptive pay of the additional post held during the period in which regular post was held. Learned counsel draws our attention to the Tribunal's order in O.A.227/95 and O.A.1057/95 dated 31.5.96 wherein, on similar facts, additional remuneration under 49(iii) was held admissible(Vide

A-6). He would plead that the impugned order has not considered the Tribunal's earlier orders and the applicant's representation though specifically directed by this Tribunal's order A-7.

4. Counsel for the respondents strenuously endeavoured to suggest that the additional posts held by the applicant during his regular tenure as additional Director of Income Tax(Inv.), Trivandrum were in the same cadre carrying the same scale of pay and also the same duties and functions under the Direct Tax laws. He would place greater reliance on the provisions of FR-49(ii) to support his contention. Counsel for the respondents would further try to persuade us to believe that under FR-11, a Government servant is wholly at the disposal of the Government which pays him and he may be employed in any manner required by proper authority, without a claim for additional remuneration. The applicant having been compensated by way of TA/DA with regard to the discharge of additional duties, has no claim for additional remuneration for the duties performed by him outside the place of his regular posting, counsel would urge.

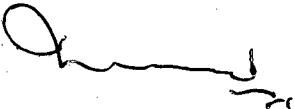
5. We have gone through the records and have considered the submissions made for and against the claim of additional remuneration under the relevant FR. We find that identical factual situation arose before this Tribunal for consideration in O.A.227/95 and O.A.1057/95. After considering all the points raised on behalf of the respondents, which, in

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substance are the same as raised in the case before us, this Tribunal quashed the orders impugned in those O.A.s and upheld the applicant's claim for additional remuneration. We hold that on the same rationale, the claim of the applicant should be upheld. The applicant held additional charge of Additional Director(Inv.), Cochin for a considerably long period, while he held the regular charge of Additional Director(Inv.), Trivandrum. The functions and duties are substantially similar but the arduous additional responsibilities carried out in a different place required to be compensated. TA/DA is not remuneration for additional work. It is only reimbursement of travelling expenditure and travel incidentals. FR-11 is quoted without any serious application of mind, since that rule starts with the phrase "Unless in any case it be otherwise distinctly provided..". It is not difficult to see that distinct and specific provision is contained in FR-49(iii). In view of the above facts and circumstances, following our earlier decision, we hold that the applicant is eligible for additional remuneration to the extent of 10% of the presumptive pay of the additional post of Additional Director(Inv.), Cochin as long as he held the said charge in addition to his regular charge. Holding of the additional charge of Deputy Commissioner of Income Tax, Trivandrum Range would not give rise to any claim of additional remuneration, as it was in the same station where the applicant held his regular charge.

6. The application is disposed of with the direction to the respondents to pass appropriate orders granting consequential monetary benefits to the applicant within a period of two months from the date of receipt of copy of this order. There will be no order as to costs.

Dated, the 1st June, 2001.

  
T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

  
A.V. HARIDASAN  
VICE CHAIRMAN

LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-6: True copy of the order dated 31.5.96 in O.A.227/95 of this Tribunal.
2. A-7: True copy of the order dated 15.12.99 in O.A.1372/99 of this Tribunal.
3. A-8: True copy of the communication issued by the 4th respondent dated 22.6.2000 to the applicant.