

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 227/95 and O.A. No. 1057/95.

Friday this the 31st day of May 1996.

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
O.A. 227/95

C. Rajendran,
Commissioner of Income Tax
(Appeals),
67-A, Race Course Road,
Coimbatore-641 018. Applicant
(By Advocate Shri KMV 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-682 016.
4. The Commissioner of Income Tax,
Cochin, Ernakulam. Respondents

(By Advocate Shri S. Radhakrishnan, ACGSC)

O.A. 1057/95.

P.C. John,
Deputy Commissioner of Income Tax
(Retd.),
Panacheril House,
Matteethara Thope,
Y.W.C.A. Lane, Kottayam. Applicant
(By Advocate Shri KMV 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 - 682 016.
4. The Commissioner of Income Tax, Aayakar Bhavan, Kowdier, Trivandrum. .. Respondents

(By Advocate Shri James Kurien, ACGSC)

The applications ... having been heard on 31.5.96 the Tribunal on the same day delivered the following:

O R D E R

Applicants claim additional remuneration in terms of FR 49(iii), for the additional charge held by them. Applicant in O.A. 227/95, while working as Deputy Commissioner, Ernakulam was appointed to hold charges of Deputy Commissioner, Trivandrum and Inspecting Assistant Commissioner, Ernakulam. Likewise, applicant in O.A. 1057/95 while working as Assistant Commissioner at Kottayam was holding the additional charges of Assistant Commissioners at Alleppey and Thiruvalla. Thereafter, they claimed additional remuneration for the additional charges held. The claim was rejected on the grounds that FR 11 negatives the claim, that they held no formal appointment, and that they were compensated for whatever work they did, by payment of T.A. and D. A.

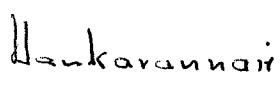
2. None of the grounds in support of the rejection is tenable. TA and DA are not paid in lieu of additional work, but only in lieu of travel in connection with work. The argument that there was no formal appointment is too transparent to stand scrutiny. The expression "formally appointed" occurring in FR 49, must be understood in contra distinction to an informal request to do work. The expression is not used in a ritualistic sense, but only in a functional sense. An official is "formally appointed" to hold charge of a post when in writing he is asked to do so. The head of the department or even a colleague may informally ask an officer to attend a particular item of work. That is done informally and not pursuant to a formal appointment. The contention of the department that a formal appointment signifies an appointment by the President of India cannot be justified. The department cannot have a case that the functions performed by applicants during the period in question were without authority. Expressions cannot be read in too literal a manner, missing the substance thereof. When under official authority applicants were directed to hold additional charge (under A5 in O.A. 227/95 and in A4 in O.A. 1057/95), it cannot be said that they did not hold a formal appointment. In fact, it is to meet such contingencies

that FR 49(iii) is incorporated. If as respondents contend, additional remuneration is excluded by FR 11, there would be no occasion to incorporate FR 49(iii), or any purpose behind it. For the foregoing reasons, denial of additional remuneration is improper.

Annexure A5 in O.A. 227/95 and A4 in O.A. 1057/95 are quashed and respondents are directed to pay 10% (ten percent) of the presumptive pay to applicants in accordance with FR 49(iii) within two months from today.

3. Applications are allowed. Parties will suffer their costs.

Friday this the 31st day of May, 1996.


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

rv31/5

List of Annexures

1. Annexure-A5 in OA 227/95:- A true copy of order No.20/ESH/3/98 CC CHN/92-93 dtd.18.3.93 issued by the Deputy Commissioner of Incometax(H) of the office of the 3rd respondent.
2. Annexure-A4 in OA 1057/95:- A true copy of the proceedings C.No.56(1)/ADM/94-95 dtd.20.12.94 by the 4th respondent.