

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW.

C.A.No.114/90(L)

K.R. Srivastava, ::::: Applicant

Vs.

Union of India &
Others. ::::: Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. V.K. Seth, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant, who has now retired from service, at the relevant point of time was an I.A.S. Officer, having been promoted to that cadre from U.P. Civil Service cadre, has approached the Tribunal praying certain reliefs. Later on the reliefs were amended by way of amendment. The applicant ^{has} prayed that the order dated 3rd February, 1990, a copy of which has been annexed with this application, by which the applicant's request for allowing additional pay for performing full duties of two independent posts was rejected, be quashed and it may be declared that he is entitled for an amount of Rs.18,942/- representing the additional pay on the analogy of the original Fundamental Rules 49, along with 15% interest on the original amount till the date of payment and the Agricultural Production Commissioner, U.P. be directed to ensure compliance of the Hon. Tribunal's orders within three months from the date of receipt of the certified copy of the Tribunal's Judgment. The applicant was appointed on Senior Scale post w.o.f. 3-5-82 in IAS cadre. He was allowed Jr. Administrative scale of Rs.3950-5000 on 1-7-86 and his pay was ~~been~~ fixed on Rs.5000/-. The

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post of Managing Director in U.P. Seeds and Terai Development Corporation Ltd. with Head Office at Pantnagar, Dist. Poonch and Camp office at Lucknow was also created in the scale of Rs. 2700-3000 by Govt. of U.P. and the applicant was appointed on the said post on 30-6-85 in addition to his own duties as Joint Secretary to the Govt. Thus the applicant was appointed as Managing Director of the Corporation by the State Government, which had powers to make the appointment in the said Corporation. The pay scale of Rs. 2700-3000 admissible to the M.D. of the Nigam was revised to Rs. 5900-6700 with effect from 1-1-36 and in compliance of the order of the State Government dated 13-2-86 the applicant handed-over the charge of the post of Nigam in view of the revised pay scale. During the period the applicant worked as Managing Director, the Corporation did not incur any expenditure on the pay and allowances of the M.D. and on the rent of his residence at Lucknow, although the applicant had to work hard even outside office hours and on holidays in performing the full duties and responsibilities of these two posts.

2. In a meeting of the Board of Directors of the said Corporation under the Chairmanship of the Agricultural production Commissioner, a resolution was passed by which applicant was allowed to get double duty allowance for the period he held the additional charge of the Corporation in addition to his own charge as Joint Secretary. It was also held that the applicant is entitled to all the facilities admissible to the Managing Director of the Corporation with the approval of the State Government.

3. The applicant on the analogy of the rule 49 of Fundamental Rule claims the benefit of the same as the said Corporation is ready to pay the same in

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accordance with the resolution so passed. A representation ^{was} ~~has been~~ filed by the applicant to the Government enclosing a copy of the resolution but the same has been rejected.

The Fundamental Rule reads as follows :-

"The Government may appoint one Government servant to hold substantively, as a temporary measure, or to officiate in two or more independent posts at one time. In such cases his pay is regulated as follows:-

- (a) the highest pay, to which he would be entitled if his appointment to one of the post stood alone, may be drawn on account of his tenure of that post.
- (b) For such other post he draws such reasonable pay, in no case exceeding half of the presumptive pay (excluding overseas pay) of the post as the Govt. may fix and
- (c) if Compensatory or sumptuary allowance are attached to one or more of the post, he draws such compensatory or sumptuary allowance as the Government may fix provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts.

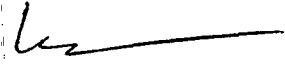
4. Shri A.K. Chaturvedi, learned Counsel for the respondents has produced before us the written instructions ^{given to him}. As per the written instructions, the request of the applicant is not allowable as it is admissible in case the duties are performed in any Government Posts or State Government Organisation.



5. The applicant appeared in person and argued that the Government made him to perform not only the duties of his own post, but also the duties of the Corporation, which was the creation of the Government itself and controlled by ^{it} ~~the Government~~ and the appointments ^{too} are made by the Government to the said Corporation ^{with} ~~and the~~ deliberations ~~of which has been with~~ decided by the Agricultural Production Commissioner. The applicant who was performing the double duty has not been paid any emoluments for his additional duties and responsibilities. Realising this, the Corporation took a decision in this behalf ^{in his favour} ~~and~~ The State Government should have paid the applicant ^{not dare} ~~but it was~~. It was further contended by him regarding the applicability of the fundamental rule 49 that even if it could be said that in terms it does not apply in this very case, because the fundamental Rule 49 will not be made applicable in the case of the Government or body or corporation as they are instrumentalities ^{of the} of State it will tantamount to taking of ^{violation} ~~and it will be~~ hit by article 23 of the Constitution of India and the applicant ^{could not have} ~~cannot been~~ made to perform the duties in this manner. He has also produced before us the D.O. issued by the Government on 8-8-88 in the case of one Shri B.L. Gupta, who was paid double duty allowance but in that case the ^{double} duty allowance was paid on the ground that he was holding the charge of Director of Census also. A reference was made to the case of Kupuswamy Iyer Vs. State of Karnataka (15 ATC 1991 p.537). In that case double duty allowance was granted for performing additional duties and responsibilities in an organisation.

6. In the instant case, of course, it can be said that the Corporation is not a Government department, but it is the creation of the Government and the Government has full control over it. The fundamental rule 49 should have been made applicable, even though in terms it does not apply, but in spirit it applies. The Govt. cannot give any additional duties and responsibilities without paying additional allowance for the same as the same will be hit by Article 23 of the Constitution of India. In our opinion, when a resolution was passed by the main body i.e. Corporation itself, the Government was duty-bound to pay the same to the applicant and it cannot refuse the same. Accordingly this application is allowed and the order dated 3-2-90 is quashed and the Government is directed to pay the amount claimed by the applicant for performing additional duty in the U.P. Seeds and Tarai Development Corporation, within a period of 3 months from to-day. Interest at the rate of 12% per annum shall also be paid on the said amount, to the applicant. No order as to the costs.


Member (A)


Vice-Chairman.

Dated: 21st April, 1993, Lucknow.

(tgr)