

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NOS.279/2001.

Dated: 08.08.20001.

<u>S.B.Deshmukh</u>	<u>Applicants.</u>
<u>Smt. S.Deshmukh Ghate</u>	<u>Advocate for</u>
Versus	
<u>Union of India & Anr.</u>	<u>Respondent(s)</u>
<u>Shri V.D.Vadhavkar, for</u> <u>Shri M.I.Sethna.</u>	<u>Advocate for</u> <u>Respondent(s)</u>

CORAM :

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,

- (1) To be referred to the Reporter or not? Yes, referred.
- (2) Whether it needs to be circulated to other Benches of the Tribunal? No
- (3) Library. No.

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(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,

Original Application No.279/2001.

Wednesday, this the 8th day of August, 2001.

Shri Justice Birendra Dikshit, Vice-Chairman,

S.B.Deshmukh,
Gut No.139, Plot No.64,
'Laxmi' At: Satara Parisar,
Chatrapati Nagar,
Aurangabad.

(By Advocate Mrs.S.Deshmukh Ghate)

...Applicant.

v.

1. The Union of India,
through Respondent NO.2,
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.

2. The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.

3. The Commissioner,
Central Excise and Customs,
N-5 Town Centre CIDCO
Aurangabad.

(By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna, Counsel for Respondents).

...Respondents.

: O R D E R (ORAL) :

Shri Birendra Dikshit, Vice-Chairman.

The applicant is working as an Assistant Chief Accounts Officer in the office of the Commissioner, Central Excise and Customs, Aurangabad. He has filed this OA claiming that he has been given additional charge of Chief Accounts Officer (in short "CAO") w.e.f. 1.2.1996; that Commissioner, Central Excise and Customs, Aurangabad made recommendation on 27.10.1999 for considering the claim of applicant under Fundamental Rule 49(1) as he is discharging the duties of a higher post

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in the same office, which was turned down by the Secretary, Ministry of Finance, New Delhi. The order of Ministry addressed to Commissioner, Central Excise and Customs, Aurangabad (Respondent No.3) is as under:

"I am directed to refer to your letter F.No.II/29(D)/36/84/HS/10905 dt. 27.10.99 on the above cited subject and to clarify that prior sanction of the Central Government is required to be taken for appointment to hold additional charge of duties of higher posts under FR 49(I) and also commissioner of Customs and Central Excise is not competent authority for such appointment. Therefore, the proposal made at this charge is not found acceptable. However, the post of Chief Accounts Officer will be filled up as soon as the panel for promotion to the grade of Chief Accounts Officer is received from UPSC."

The applicant further claims that he has been declared as Controlling Officer under the provisions of S.R.191 for T.A. claims of all group 'C' and 'D' officers attached to the Commissioner Headquarter Office at Aurangabad, and therefore, being entitled for additional remuneration, he represented on 8.4.1997 for Honorarium due to which, the respondent Commissioner, Central Excise & Customs, Aurangabad recommended his claim under FR 49(1) for honorarium on 27.10.1999; that the applicant is still handling the additional charge of Chief Accounts Officer from 1.2.1996 without any additional remuneration; that the claim is turned down for the reason that Commissioner is not the appropriate authority for appointing applicant as CAO; that for the fault on the part of Chief Commissioner of Central Excise and Customs, the applicant cannot be made to suffer; that in a similar matter, the authority earlier did give sanction to one S.L.Naik, Assistant Chief Accounts Officer on 8.12.1992, who handled additional charge of

R. S. Naik

CAO; that the applicant has been discriminated by denying honorarium; that for the above stated reasons, the applicant has prayed for a direction to Respondents to pay honorarium at the rate of Rs.5,000/- per year or officiating pay in view of holding the charge of CAO w.e.f. 1.2.1996 with allowances admissible as per Rules.

2. The claim of the applicant has been contested by the respondents by filing written statement. It is relevant to mention here that in para 1 of written statement, respondents have stated that the affidavit is being filed only for limited purpose of opposing admission. Shri V.D.Vadhavkar appearing on behalf of Shri M.I.Sethna, Counsel for Respondents, has stated that this affidavit is the only written statement and no other written statement shall be filed and therefore, the Court can proceed in the matter on that basis. The case set-up by Respondents is that Pay and Accounts Officer, Central Excise, Aurangabad was consulted in the matter, who opined that honorarium cannot be sanctioned; that his case was recommended by PAO under F.R.49(1) for grant of additional pay and therefore, the office of Commissioner Central Excise and Customs, Aurangabad recommended the matter to the Ministry of Finance; that the Ministry of Finance turned down the recommendation on the ground that the Commissioner of Customs and Central Excise, Aurangabad is not competent authority for appointing applicant to hold additional charge of duties of higher posts and therefore, the proposal is unacceptable; that so far as the case of S.L.Naik, Assistant Chief Accounts Officer is concerned, he was holding additional charge of Chief Accounts Officer for the period from *B.Visnit*

1.8.1990 to 31.10.1992 on the sanction of Commissioner as Head of the Department, wherein the honorarium was of Rs.1400/- for working for 8 months, Rs.2000/- for 12 months and Rs.900/- for 6 1/2 months; that the Commissioner did not grant honorarium of Rs. 5,000/- per year; that the PAO, Central Excise, Aurangabad did not agree for sanction of honorarium like that of S.L.Naik and therefore, the Department could not sanction honorarium to the applicant though applicant was holding additional charge; that in view of said circumstances, the applicant is not entitled for honorarium of pay of higher post.

3. The learned counsel for the applicant argued that the applicant is not at fault so far as want of approval by Ministry is concerned. He contended that applicant has been discharging the duties of higher post ^{with} full knowledge to Respondents ^{without any objection} and therefore, the applicant is entitled for honorarium at the rate of Rs.5000/- per year or for officiating pay due to holding of charge of higher post w.e.f. 1.2.1996, the date on which he took over charge and started discharging duties of higher post. This has been vehemently opposed by Counsel for Respondents Shri V.D.Vadhavkar on the ground that in the absence of sanction by competent authority, the applicant is not entitled for honorarium.

4. It is not in dispute that applicant is discharging duties of Chief Accounts Officer since 1.2.1996 but during arguments Learned Counsel for respondents contended that applicant was not assigned all the duties of higher post. According to Learned
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Counsel for Respondents, the duties of Chief Accounts Officer assigned to applicant vide order dt. 17.12.1997 are in following words :

" The Chief Accounts Officer in this Office is delegated with the powers as under.

(i) In exercise of the powers vested in me under S.R.191, the C.A.O. is hereby declared as 'Controlling Officer' for the purposes of T.A./Tr.T.A./L.T.C. in respect of Group 'B', 'C' and 'D' Officers in this office.

(ii) By virtue of his being the 'Controlling Officer' as at (i) above, the C.A.O. shall also be the sanctioning authority of the claims for Tuition Fees, Children Education Allowance and Medical reimbursement claims of Group 'B', 'C' and 'D' officers in this office.

(iii) The C.A.O. is also authorised to exercise the powers under Rule 3 (1) (c) of the C.C.S. (Leave) Rules, 1972 in respect of Group 'C' and 'D' Officers in this office, subject to the condition that the period of Leave applied for is not more than 60 days."

Respondents' Learned Counsel has pointed out that the duties assigned by the Commissioner are limited to all types of T.A. claims of Group 'C' and 'D' and applicant is sanctioning authority to claims relating to tuition fee, childrens allowance, medical reimbursement and LTC claim etc. of Group 'C' and 'D' Officers attached to the Commissioner's Headquarter, beside being sanctioning authority of leave of Group 'C' and 'D' staff and is to attend all item of work which are being handled by the present CAO. He was declared as Controlling Officer for said purpose. The said arrangement was directed to continue till a regular CAO assumes charge. The documents on record show that applicant applied to Commissioner Headquarter on 8.4.1997 requesting for sanctioning honorarium for holding charge of CAO and attending the work as Controlling Officer. The applicant has also filed a B.O.I. wr

letter of Under Secretary, Ad.II (A), Central Board of Excise and Customs, New Delhi which also shows that the request was made by applicant on 8.4.1997 for sanctioning honorarium under Fundamental Rule 46(b) for attending the work of CAO upon the retirement of regular Chief Accounts Officer. He also made representation on 8.9.1999 which indicates that applicant had been asking for honorarium since 1997. It is apparent from the letter of Commissioner Customs & Central Excise dt. 27.10.1999 (Exhibit A-4) that the applicant was directed to attend all work handled by the regular Chief Accounts Officer by Establishment Order No. 10/1996 dt. 31.1.1996 till a regular Chief Accounts Officer assumes charge. The Commissioner has referred to opinion of PAO, Aurangabad in that letter who appears to have advised that no honorarium can be sanctioned to applicant as per GOI Decision No.1 issued from F.No.S-VII.R-I/30, dt. 3.9.1930 under FR 46 but the matter can be taken up with the Ministry for sanction of pay as per provision of F.R.49 (i) relating to combination of appointments. The letter indicates that some Officer was posted as CAO on 16.12.1997, who did not take charge. It is also admitted by Commissioner in said letter that the applicant is holding charge right from 1.2.1996. In this matter the Commissioner did recommend for grant of additional pay as per provisions of F.R. 49(1) and requested for conveying Ministry's approval at the earliest. Despite said letter of Commissioner, the Respondents 1 and 2 did not care to post any one else as Chief Accounts Officer though they had full knowledge that the applicant is discharging duties of higher post since 1.2.1996.

5. It is admitted to respondents that applicant is still working

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as CAO discharging the duties of a higher post and no CAO has yet taken charge of the said post. Despite full knowledge that applicant is discharging duties of CAO, the claim of applicant has been rejected by Ministry of Finance.

6. It has not been disputed by applicant that Commissioner is neither sanctioning nor he is competent to exercise the powers of Rule 49(1) to pay for working on a higher post and it required sanction of Central Government as the post of CAO is a Group 'A' post. But, so far as the applicant before us is concerned, we cannot ignore the fact that the Respondents had full knowledge about discharging of duties of higher post by applicant against which they did not object. They were supposed to object against applicant's such functioning if they did not approve the arrangement after knowing about it. They neither objected nor took any decision despite knowledge of the fact that applicant was directed to discharge duties of CAO as mentioned earlier. When the Respondents did not object and allowed applicant to work and admittedly he is still working and discharging duties of higher post then the authority competent to sanction such an arrangement cannot be allowed to say now that he did not sanction. The respondents are still taking work from applicant despite the fact that he has been working for last 5 1/2 years, and it was for Secretary to see and take steps so that applicant was not being made to discharge duties of higher post for such a long time, if he was not to be paid. Here, except assigning the reason that the Commissioner is not competent to exercise power under Rule 49(1) to pay applicant for working on higher post, no B. ^{sent}

other reason has been assigned by respondents for not paying applicant.

7. Respondents Counsel during argument has accepted that the applicant is still discharging the duties of CAO. The Finance Ministry accepts in its letter dt. 27.1.2000 about Commissioner being not competent to appoint applicant for working on higher post, but they neither stated as to why the Respondents ~~have~~^{did not make} ~~make~~ some other arrangement so that applicant could be relieved from discharging duties of higher post ~~earlier~~^{nor it has} stated as to why the approval has not been granted in respect of applicant for working and discharging duties of higher post. Asking an official to work and discharge duties of higher post yet not paying him despite Rule 49(1) is nothing but 'begar' and exploitation. Thus, it is to be held that respondents are have not been fair to applicant by withholding the decision in respect of applicant's claim.

8. The question which arise for consideration under such circumstances is if applicant can get any relief when the Commissioner was not competent to appoint him to work and discharge duties of higher post of CAO. I have already observed earlier that the respondents being fully aware that applicant has been working and discharging duties of higher post. He was allowed to work and has been discharging duties for the last 5 1/2 years with full knowledge of competent authority, the Secretary to Union of India in Ministry of Finance. The competent authority despite said knowledge did not appoint any one to work and discharge duties of CAO, that too despite applicant's claim and even filing of this OA. In such

circumstances, the Respondents cannot be allowed to take undue advantage of getting work done without paying as per rules, where competent authority is supposed to order in view of FR 49 (1). It is not a case where all this went on without knowledge of Central Government, the sanctioning authority. The circumstances are such that they lead to conclusion that there was implied approval of respondent, Secretary of Finance, to what was ordered by Commissioner. Thus, it is a fit case where principle of estoppel and acquiesce against respondents come into play and therefore, on said principle, respondents are liable to carry out their obligation under Rule 49(1) by paying applicant for working and discharging duties of higher post. Thus, my conclusion is that the applicant is entitled to pay of higher post under Fundamental Rule 49(1) and the application is liable to be allowed.

9. For the above reasons, application is allowed and the respondents are directed to consider the entitlement of the applicant under F.R. 49(1) for paying all emoluments of higher post of CAO to applicant in the light of above observation and consider applicant's such entitlement till he works and discharges duties of higher post. The applicant will be entitled for difference of pay, DA and all other emoluments as arrears w.e.f. 17.4.2000 i.e. one year prior to the date of filing of the OA, which is to be made ⁱⁿ accordance with Fundamental Rule 49(1). The Respondents are further directed to give effect to this order within three months from the date of receipt of

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certified copy of this order by Respondent No.2, The Secretary, Ministry of Finance, Department of Revenue, New Delhi. There shall be no order as to costs.

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

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