

(91)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

O.A. No. 840/89

Date of Decision: 28.8.92

T.A. No.

Sri K.Jaganmohan Rao

Petitioner

Sri JV Lakshmana Rao

Advocate for
the Petitioner(s)

Versus

Secretary,Dept. of Electronics

Respondent

Sri NR Devraj, Addl.CGSC

Advocate to
the Respondent

CCR. M:

THE HON'BLE MR. T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporters or not ?
3. whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on Columns 1, 2, 4 (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench.)

T - C. S
(HTCR)
M(J)

92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH

AT HYDERABAD

ORIGINAL APPLICATION NO.840/89

DATE OF JUDGEMENT:

28 AUGUST 1992

BETWEEN

Sri K. Jagan Mohan Rao .. Applicant

AND

1. Secretary,
Dept. of Electronics
Lok Nayak Bhawan, 3rd Flr,
Khan Market, New Delhi-110003
2. Addl. Secretary to ^{Government of India} Planning Commission
and Director General,
National Informatics Centre, A-Block, CGO Complex, Lodi Road,
New Delhi
3. Secretary
Min. of Personnel, Pub. Grievances,
and Pensions
Dept of Pension and Pensioners Welfare
New Delhi .. Respondents

Counsel for the Applicant : Sri JV Lakshmana Rao

Counsel for the Respondents: Sri NR Devraj, ^{SC} CGSC

CORAM:

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

T. C. R.

..2.

JUDGEMENT OF THE SINGLE MEMBER BENCH DELIVERED BY
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed under Section 19 of the Administrative Tribunals Act for a direction to the respondents-

- i) to refix his pay in the pay scale of Rs.3700-5000/- as Manager(Admn) redesignated as Deputy Secretary of National Informatics Centre, retrospectively w.e.f.18.5.1983;
- ii) to pay additionally ten percent of the presumptive pay of the additional post of Joint Director(Cost Accounts) from 18.5.83 to 30.11.88
- iii) to revise all his retirement benefits and pension payment order with all consequential benefits, and to pass such other orders that are deemed fit and proper in the circumstances of the case.

The facts giving rise to this OA in brief, are as follows:

2. The applicant, while he was working as adhoc Joint Director(Cost Accounts), was asked to hold additional charge as Manager(Administration) in National Informatics Centre w.e.f.18.5.83. The applicant retired from service on 30.11.88. The applicant had worked jointly in two posts i.e. Joint Director (Cost Accounts) and Manager(Admn) in NIC, Department of Electronics from 18.5.83 to 30.11.88, which as already pointed out, is the retirement date of the applicant. According to the applicant, he was denied pay fixation for holding the post of Manager(Admn) right from 18.5.83 to 30.11.88, which post carried higher scale of pay than that of Joint Director(Cost Accounts). According to the applicant as per FR 49, he is entitled for pay f

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fixation for holding the post of Manager(Admn) right from 18.5.83 to 30.11.88, as well as allowances for combination of appointments of the said two posts. After the applicant retired on 30.11.88, the pension were and retirement benefits ~~were~~ fixed in the scale of pay of the applicant which he was drawing as Joint Director(Cost ~~Cost~~ Accounts) of Department of Electronics totally ignoring the applicant's services as Manager(Admn) (redesignated as Deputy Secretary) from 18.5.83 to 30.11.88. So, the applicant after retirement submitted a representation dated 12.4.89 to the Secretary, Govt. of India, Department of Electronics, requesting to re-fix his pay in accordance with the rules. As the representation of the applicant was kept pending by the Secretary of Department of Electronics, the present OA is filed by the applicant for the relief as already indicated above.

3. Counter is filed by the respondents opposing this OA, on the following grounds.

4. According to the respondents, the applicant was never appointed and kept in full additional charge of the Manager(Admn), National Informatics Centre. So, according to the respondents, the applicant is not entitled for fixation of his pay in the post of Manager(Admn) for want of appointment order by the Competent authority placing the applicant in full additional charge of Manager(Administration), NIC.

5. Secondly, the applicant ~~had~~ never full work as Joint Director(Cost Accounts) and so he was asked to look after the work of Manager(Admn), NIC, in which post also there was ~~not~~ much work to look after as NIC was at its initial stage. In the year 1983 when the applicant

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was asked to look after the post of Manager(Admn) the applicant had not discharged any additional duties worth the name in the post of Manager(Admn), applicant is and so the not entitled to any allowances as claimed by him.

6. The fact that the applicant was working as Joint Director(Cost Accounts) in the year 1983 is not in dispute in this OA. The fact that the applicant was also looking after the work of Manager(Admn) w.e.f.18.5.83 is also not disputed. In this context, it will be relevant to extract the office order of Director, Computer Development Division, Deptt. of Electronics dated 21.6.1983, which is as follows:

"11(6)/83-Comp(2)

June 21, 1983

OFFICE ORDER

With effect from 22nd June, 1983, Shri K.Jaganmohan Rao, Joint Director(CA) is temporarily transferred from Computer Development Division to the National Informatics Centre, Electronics Commission (IPAG) to work as the Manager(Administration) on full time for a period of one year in the first instance. He will, however, continue, to get his pay and allowances from the Department of Electronics. This arrangement will continue until further orders and represents an internal arrangement.

(emphasis supplied)

Sd/-
(N.Seshagiri)
Director "

7.. As could be seen from the office order dated 21.6.83, issued by the Director, Computer Development Division, that only as internal arrangement that the applicant had been asked to work as Manager(Admn) in National Informatics Centre.

The applicant had never been appointed by the competent authority to look after the work of the post of Manager (Admn), NIC and had been kept in full additional charge of the said post of Manager (Admn) by the said competent authority.

8. The learned counsel appearing for the applicant very strongly relied on FR 49(3) which reads as follows:

(iii) "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 post is held for a period of exceeding 39 days but not exceeding 3 months;

.....
....."

The learned counsel appearing for the applicant contended that the applicant is entitled in view of the provisions contained in FR 49(iii) higher pay which in this case is Manager(Admn)NIC, and also 10% of the presumptive pay of the said post of Manager(Admn).
~~FR 49-9.~~ From the provisions produced above, it is amply evident that a Govt. servant who claims pay of the higher post or presumptive pay as contemplated under the said provision, the said government servant has to be formally appointed to hold the charge of the said higher post. Appointment to hold the charge of the said post ^{higher} can only be made by the competent authority. Admittedly in this case, the applicant is not 'appointed' to hold the said post of Manager(Admn) NIC by the competent authority. As the said office order

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dated 18.5.83 indicates that it is only an interim arrangement that the applicant had been asked to look after the work in the post of Manager(Admn) NIC. So, as the applicant had not been appointed by the competent authority in the said post and not kept in full additional charge of Manager(Admn), in our opinion, the applicant has no right to invoke the said provision FR 49(iii) and seek any relief. Even though the applicant might have discharged the duties in the post of Manager(Admn), it is only an interim arrangement that the applicant had discharged the said duties as is evident from the said office order dated 18.5.83. The applicant has no right to claim the pay in the said post of Manager(Admn) which post, admittedly, is having higher basic than that of the post of JD (Cost Accounts). So, for want of ~~an~~ appointment order by the Comptent Authority, in placing the applicant in full additional charge of the Manager(Admn), NIC, this OA is liable to be dismissed.

10. The applicant has ~~an~~ filed additional material to show the duties he was performing from 18.5.83 to 30.11.88, as ~~an~~ Manager(Admn), NIC. But, as already pointed out, the case of the respondents is as the applicant was ^{not} having sufficient work in the post of JD(CA), the applicant was ~~an~~ assigned the work of Manager(Admn), in which post also there was said to be ^{no} sufficient work. In the counter filed by the respondents, it is specifically pleaded by-the-r that as Manager(Admn), NIC that the applicant was to examine only one or two contracts per month. It is also pleaded further that the work to be attended to in both the posts was hardly sufficient for a single individual manning the post of Joint Director (Cost Accounts), and Manager (Admn), NIC.

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11. We have perused the material placed before us by the applicant showing the duties he was performing in the post of Manager(Admn), NIC while holding the post of Joint Director(Cost Accounts). The competent authority after taking into consideration the duties he was discharging in both the posts ~~xx~~ is not had come to the opinion that this ~~xx~~ a fit case to grant any additional remuneration or to allow the applicant ~~xx~~ ~~xx~~ the pay of the higher post, which, in this case is Manager(Admn). In the OA, absolutely we see no malafides on the part of the respondents in not allowing the applicant pay of the higher post, i.e. Manager(Admn) NIC or presumptive pay as claimed by him. As we see no malafides on the part of the respondents in rejecting the claim of the applicant for ~~x~~ pay in the higher post and also the presumptive pay for the said post. It is not open for us to interfere with the opinion of the competent authority in not allowing the pay of the higher post or presumptive pay.

12. Para 2(i) of Govt. of India, Min. of Personnel, PG and Pensions OM No. 4/2/89-Estt(Pay-II) dt. 11.8.89 which is one of the material papers submitted by the applicant reads as follows:

"When an officer is required to discharge all the duties of the other post including the statutory functions, e.g. exercise of power derived from Acts of Parliament such as Income Tax Act or the Rules, Regulations, By-laws made under various articles of constitution such as FRs, CCS(CCA)Rules, CSRs, DRPRs, etc. then steps should be taken to process the case for getting the approval of the Competent Authority and formal orders appointing the officer to the additional post should be issued. On appointment, the officer should be allowed the additional remuneration as indicated in FR 49."

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On the basis of the said OM it is contended that the applicant in this case is also entitled to additional remuneration as indicated in ~~xxx~~ clause (iii) of FR 49. The said OM makes it clear that orders for such appointments should be issued. As already pointed out, no formal orders are issued by the respondents appointing the applicant in the said higher post. So, the said OM relied by the applicant's counsel absolutely has no application to the facts of this case.

The learned counsel appearing for the applicant relied on the following decisions in support of the case of the applicant.

SLJ 1981(1) 432 - KG Menon Vs Union of INDIA

SLJ 1983(2) 389 - Smt P. Grover Vs State of Haryana

SLJ 1988(1) 622(CAT) Sri KB Vaidya Vs Union of India

SLR 1990(2) 632(CAT) CB D Mello Vs Govt. of India

We have gone through the above decisions carefully, and they are not applicable to the facts of this case.

So, we see no merits in this OA and this OA is liable to be dismissed and therefore ^{is} accordingly dismissed leaving the parties to bear their own costs.

T. C. I. H. R.

(T. CHANDRASEKHARA REDDY
Member (Jud1.))

Date:

28 August, 1992

8/17/2
Dy-Registrar (J)

To

1. The Secretary, Dept. of Electronics
Lok Nayak Bhawan, 3rd Floor, Khan Market New Delhi-1. *Government of India*,
2. The Addl. Secretary to Planning Commission and Director General,
National Informatics Centre, New Delhi.
3. The Secretary, Ministry of Personnel, Pub. Grievances
and Pensions, Dept. of Pension and Pensioners Welfare, New Delhi.
4. One copy to Mr. J. V. Lakshmana Rao, Advocate, Flat No. 301,
Balaji Towers, New Bakaram, Hyderabad.
5. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
6. One spare copy.

pvm.

ppm *35/12*

ASR
3/9/92

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

Dated: 28 - 8 - 1992

ORDER JUDGMENT

R.A. / C.A. / M.A. No

in

O.A. No. 840 / 89.

T.A. No.

(W.P. No)

Admitted and interim directions
issued

Allowed.

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered / Rejected

No orders as to costs.

Central Administrative Tribunal

DESPATCH

18 SEP 1992

HYDERABAD BENCH,