

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPER BENCH, JAIPUR.

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Date of Decision: 31.08.2020

QA 520/94

G.P. Agarwal, retired Director, Small Industries Service Institute, Govt. of India, Jaipur.

... Applicant

viii

1. Union of India through Secretary, Ministry of Industry, Udyog Bhawan, New Delhi.
2. Development Commissioner, Small Scale Industries, Deptt. of S.S.I., Agro & Rural Industry, Ministry of Industry, Mirman Bhawan (South Wing), VIIth Floor, Maulana Ajad Road, New Delhi.

••• Respondents •

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**HON'BLE MR. S. K. AGARWAL, JUDICIAL MEMBER**

HON'BLE MR.N.P NAWANI, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.P.P.Mathur, proxy counsel  
for Mr.R.N.Mathur

For the Respondents ... Mr. U.D. Sharma

· O R D E R

PER HON'BLE MR N.P.NAWANI, ADMINISTRATIVE MEMBER

In this application filed u/s 19 of the

Administrative Tribunals Act, the applicant prays that

the respondents may be directed to grant additional

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remuneration to him for holding additional charge of the post of Director, Hand Tool Design Development and Training Centre ~~■~~ (for short, HTDDTC) Nagaur, during the period 9.6.88 to 30.6.91 with interest @ 18% p.a. on the delayed payment. Further, the additional remuneration may be computed for the purpose of pensionary benefits and revised pension order may accordingly be issued.

2. The facts as stated by the applicant ~~xxx~~ are that he was posted as Director, SISI, Jaipur, from October, 1979 till 30.6.91, when he ~~xxx~~ retired. While he was holding the said post, he was directed to hold the current charge of the duties of the post of Director, HTDDTC, Nagaur vide order dated 6.6.1988 (Annexure A/2) and accordingly the applicant assumed the charge of the said post on 9.6.88 and continued to hold that additional charge till his superannuation. The applicant made a representation dated 22.7.88 (Ann.A/3) to respondent No.2 stating that he was entitled to get a special pay of Rs.500/- p.m. on account of holding the additional charge, whereupon a communication was sent to the applicant dated 1.4.91 informing him that he was not entitled to get extra

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remuneration. As the matter was not examined properly, the applicant submitted further representations vide Anns .A/5, A/6 and A/7. His representation dated 7.3.94 (Ann.A/7) was finally rejected by the letter ~~no~~ dated 13.6.94.

3. It has been contended by the applicant that denial of additional remuneration on holding of additional charge of the post of Director, HTDDTC, Nagaur, was ex-facie illegal, unreasonable and unjustified. In the letter dated 6.6.88 asking the applicant to hold the additional charge of the post of Director, HTDDTC, Nagaur, it has nowhere been mentioned ~~inxxm~~ that the applicant shall temporarily look after the work. The applicant was holding the full charge of the post of Director at Nagaur and performed such duties for more than three years and was, therefore, entitled to get the additional remuneration under FR 49(iii). If the respondents were not been able to get the formal orders in this regard, it was their mistake and the applicant could not be held responsible for the same. The Govt. of India have also, vide order dated 12.9.66 (Ann.A/7) issued directions that if there is combination of appointments then it is holding/dual charge and the employee is entitled to

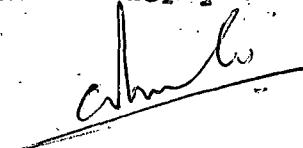
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get additional remuneration.

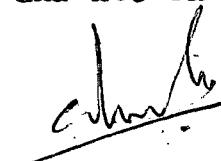
4. In their reply the respondents have taken a preliminary objection that the OA is hopelessly barred time barred, in view of the cause of action had arisen when the impugned order regarding additional charge was issued on 6.6.88. As per provisions of the Administrative Tribunals Act, the OA should have been filed either within one year of the issuance of the impugned order or within six months of filing of ~~fix~~ the first representation. In any case, the first representation dated 22.7.88 (Ann.A/30) was rejected vide letter dated 1.4.91 (Ann.R/1) and even if, for argument's sake, this ~~same~~ letter is considered to be one giving rise to the cause of action, the OA represented on 17.10.94 is barred by limitation. The contention of the applicant that final rejection of his representations was done vide letter dated 13.6.94 has no force because it is now well & settled that the repeated representations ~~same~~ do not extend limitation.

5. It has also been stated by the respondents in ~~their~~ their reply that the applicant did not hold ~~fulfilled~~



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charge of the office of Director, HTDDTC, Nagaur, and in fact, Shri R.S. Gupta, former director of the HTDDTC Nagaur, had been transferred as Director, Small Scale Industries, Ahmedabad alongwith his post vide order dated 6.6.88 (Ann.R/2) and the applicant was directed vide Ann.A/1 to hold the current charge of the post office of HTDDTC Nagaur in addition to his existing charge. It was, therefore, contended that since there was no post of Director, HTDDTC, Nagaur, the question of assuming the charge of the said post by the applicant on 9.6.88 did not arise. It has also been contended that the applicant was only asked to exercise the non-statutory and administrative duties and in fact vide letter dated 27.11.87 (Ann.R/3) it was clarified that the officer holding the current charge of the post can exercise only the financial and administrative powers but not the statutory powers delegated to the regular incumbent and it was also added that the applicant cannot make appointments to Group-C and Group-D posts. It has finally been contended that the denial of special pay to the applicant was perfectly legal and justified and not in violation of any of the Articles of the



Constitution of India and, therefore, the OA deserves to be dismissed.

6. The applicant has filed rejoinder to the ~~xx~~ reply of the respondents. While reiterating his case about limitation starting from final rejection of his representation vide letter dated 13.6.94, the applicant has stressed that he was holding the full charge of the post of Director, HTDDTC, Nagaur, during the relevant period as it would ~~no~~ be unreasonable and unjust ~~x~~ to consider that for such a long period of three years the applicant was holding only the ~~xxxx~~ current charge. It has also been mentioned that the communication dated 27.11.87 (Ann.R/3) is not ~~xx~~ in relation to the applicant and the applicant in fact issued the appointment letters of certain employees of Group-C and Group-D categories. The applicant also placed orders for plant & machinery worth lakhs of rupees on DGS&D by signing legal documents and also obtained power, water and telephone connections. The applicant also mentioned that the guidelines issued by the Government of India vide letter dated 11.8.89 (Ann.A/9) emphasise that it has been observed that in practice in a ~~large~~ number of cases officers are

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appointed to hold additional charge of current duties of another post but the duties are not defined in the order and, therefore, officer performs all the functions of the other post including even some ~~as~~ statutory functions but no additional remuneration is paid to him in view of the non-specific language of the order of his appointment. The applicant, therefore, contended that denial of additional remuneration to him is also based on such non-specific order dated 6.6.88. The claim of the respondents that with the transfer of previous incumbent alongwith his post from Nagaur to Ahmedabad, there was no post of Director, HTDDTC, Nagaur, it has been contended by the applicant that the said post is regular post existing since it was created and if no such separate post existed, the question of current charge would not have come up and the impugned order dated 6.6.88 itself clearly states that the new Director would join there in future and the present arrangement is the period till a new Director joins.

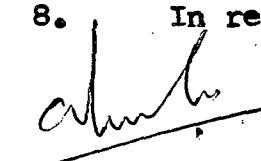
7. In their reply to the rejoinder the respondents, apart from reiterating the question of limitation and the applicant having been ordered to hold only the current

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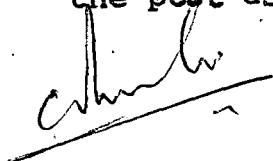
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charge of the duties, have also stated that the applicant had in fact issued appointment orders of certain Group-C and Group-D employees in his capacity as Director, SISI, Jaipur, as can be seen from Ann.A/10, and as far as the placement of orders for plant and machinery was concerned, it was placed by Assistant Director on behalf of Director Jaipur and the legal documents in that regard have also been signed by Director SISI Jaipur as an indentor (Ann.R/4). They have also annexed Ann.R/5 to R/7 to show that various letters with regard to telephone connections etc. were issued by either the Deputy Director or the Assistant Director of the Centre at Nagaur. It has also been stated that in the impugned order (Ann.A/1) the expression; "post of the Director" was used only with the view to indicate the position with the duties which were earlier attached to the said post, were to be discharged by the applicant and the ~~applicant~~ expression; "the applicant will hold current charge till such time another Director takes over does not itself mean that the post of Director at Nagaur was in existence.

8. In reply to the ~~your~~ rejoinder, the applicant has filed



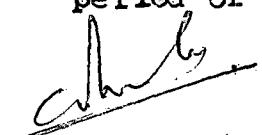
an affidavit, wherein it has been stated that in case of purchase of plant and machinery, it was only after getting the approval of the Director, that the orders were placed by Assistant Director (Adm.), SISI, Jaipur as he was the DDO for HTDDTC Nagaur also and even now continues to be so but it can be verified from the purchase files that the approval has been done by the applicant in his capacity as Director, ~~HTDDTC~~ HTDDTC, Nagaur. Similarly, in the case of telephone connection etc. approval and sanction was given by the Director Nagaur and correspondence was signed by the subordinate officers. In the case of appointment of skilled workers and Group-D staff as also while the office orders were issued by the Assistant Director (Adm.), these were on behalf of Director, HTDDTC, Nagaur. As regards the existence of the post of Director at Nagaur, it has been contended by the applicant that the post of Director in Small Industries Development Organisation are filled in accordance with the discipline like mechanical, Electrical etc. and for administrative convenience the incumbents are usually transferred alongwith the post as a matter of routine and that is how Shri R.S.



Gupta was transferred to Ahmedabad. This, however, does not amount abolition of the sanctioned post of Director at HTDDTC Nagaur. It has also been mentioned that earlier the Director, SISI, ~~Jaipur~~ Ahmedabad was transferred from there along with post but the ~~xxx~~ sanctioned post of Director remained at Ahmedabad, which was filled in by Shri R.S. Gupta.

9. We have heard the learned counsel for the parties and have perused all the material on record.

10. It is an admitted fact that the applicant performed the duties on behalf of HTDDTC Nagaur in addition to his duties as Director, SISI, Jaipur, for a long period between 9.6.88 to 30.6.91. It has also been admitted by the respondents that the expression 'will hold current charge of the duties of the post of Director HTDDTC Nagaur' incorporated in the impugned order dated 6.6.88 (Ann.A/1) was for the purpose of enumerating the duties which were earlier ~~not~~ being performed by the Director, HTDDTC, Nagaur. It is not the case of the respondents that during this long period of three years, the work at HTDDTC Nagaur had been



wound  
~~extant~~ up or the scale of activities had been reduced.

In fact it is quite clear to us that the ~~work~~ during

this period had actually ~~set~~ <sup>up</sup> ~~up~~ new power.

telephone, water connections etc.; certain Group-C and

Group-D posts were created and employees appointed; plants

and machinery worth lakhs of rupees were purchased and

we have no reason to disbelieve the claim of the applicant

~~regarding~~ recorded on 7.3.94 with photo-copy at Ann.A/10

that the duties at Nagaur, which is at a distance of

300 kms. from Jaipur, involved setting up of a new

project and the applicant brought up this Centre

practically from a ~~scratch~~ to the stage of functioning,

pending formal inauguration at the close of his tenure

on 30.6.91. In fact the respondents have not controverted

the claims made by the applicant at Ann.A/10. It is,

therefore, quite clear that the applicant was not looking

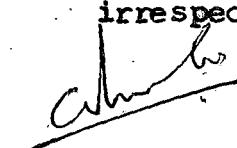
after the routine duties of another post which could be

covered under FR 49(iv) and for which no additional pay

is admissible to a government servant who is appointed

to hold the current charge of such routine duties

irrespective of the dual charge.



11. Although it has been strenuously contended by the respondents that no post of Director at Nagaur Centre existed after transfer of Shri R.S.Gupta alongwith his post to Ahmedabad, we are unable to appreciate such contention. In view of what has been stated in the preceding paragraph and also lack of any document etc. having <sup>been a</sup> placed before us indicating that it was really only the routine duties of the Centre at Nagaur which the applicant was performing in addition to his duties as Director, SISI, Jaipur. We are in fact more inclined to accept the contention of the applicant that the post of Director of various Centres in Small Industries Development Organisation are filled in accordance with the discipline like Mechanical, Electrical etc. and it is for administrative convenience that the incumbents are usually transferred alongwith the post as a matter of routine and ~~that~~ even in case of Director, previous SISI, Ahmedabad, ~~the~~ incumbent before Shri R.S.Gupta was transferred out alongwith the post but on his transfer Shri R.S.Gupta was posted to Ahmedabad because the sanctioned post of Director remained. Even if, for the argument's sake, it is accepted that no post of Director existed at Nagaur, it is ~~inconceivable~~ inconceivable to



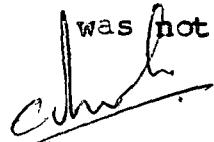
think that a fulfledged Centre which is normally headed by a Director would continue to exist in the absence of a post heading that Centre. In any case, when the respondents issued the impugned order dated 6.6.88, it was to perform the functions of the Director at Nagaur Centre and it has come out clearly that the applicant did perform all the ~~five~~ functions of the Director, HTDDTC, Nagaur; in fact he is said to have developed the Centre at Nagaur from the scratch. Further, we find from letter dated 22.7.88 (Ann.A/2) that the applicant has taken over the additional charge of Director, HTDDTC & ~~Executive~~ Centre Nagaur, from Shri R.S.Gupta and recommending payment of Rs.500/- p.m. as Special Pay under the provisions of FR-49 as also Government of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms O.M. No.6(26)/Estt.(Pay II)/81 dated 30.12.81, wherein it has been clarified that admissibility of the additional monetary benefits in case of appointments held by an officer may be granted when such appointment is likely to continue beyond three months. It may be recalled that in the present case, the applicant was made to hold the

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additional charge for as long as three years. The case of the applicant is also further strengthened by the guidelines issued by the Government of India dated 11.8.89 (copy at Ann.A/9), wherein it has been clearly mentioned that in actual practice it has been observed that in a number of cases the language of the order regarding holding of additional charge is not very clear and, therefore, no additional remuneration is paid under FR-49 which has lead to representations and litigations. ~~Despite~~ Inspite of existence of such guidelines, if the respondents did not clearly define, in a modified order, as to what all functions of the post of Director of the Centre at Nagaur the applicant will perform, the blame lies with the respondents and the applicant cannot be deprived of a small benefit in terms of FR 49(iii) which, in our view, should apply in the case of the applicant.

12. The learned counsel for the applicant has cited following judgements in support of his contention :-

- i) 1987 (5) SLR 414 (CAT-Orissa), Ratnakar Menon v. State of Orissa, Home Department, in which additional pay was not allowed for holding additional charge of the

  
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post because the petitioner discharging the duties of additional post of Under Secretary in the same Department.

ii) 1991 (6) SLR 131 (CAT-New Delhi), D.N.Pandey v. UOI, in which the applicant was Administrative Officer, A.O. in New Delhi and was asked to look after the work of the same post at Bombay. Since no formal appointment order was issued and both the post being in the same pay scale, it was held that the applicant was not entitled remuneration.

iii) 1993 (2) SLJ 351 (CAT-Hyderabad), V.V.S.Sarma v. D.G., Department of P&T. The applicant, an A.O., was asked to look after the duties of AO, Internal Financial Advisor, to function on both the posts w.e.f. 17.3.87 to 15.11.89. It was held that the applicant <sup>was</sup> not entitled to extra remuneration under FR 9(25) and 49(2). Reasons given was that there was no substantive work for the post of AO, IFA and there was nothing on record to show that the applicant was discharging duties of onerous nature. Further the applicant was not appointed to hold the dual charge by the competent authority.

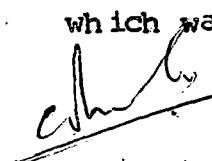
iv) 1997 SCC (L&S) 1439, Mohd. Swale v. UOI & Others.

Deputy Registrar of CAT ordered by the Vice Chairman to

*allow*

discharge the functions as Registrar - Vice Chairman not empowered to make appointment of Registrar - President of India is ~~Appointing~~ Appointing Authority because it is a Group 'A' post. No delegation to Vice Chairman - held on account of this deficiency, the Deputy Registrar not entitled the Registrar's salary under FR 41(1).

We have given our most respectful consideration to the judgements cited above. In case of the judgement cited at (i), additional pay was not allowed since ~~petitioner~~ petitioner was discharging additional duties in the same office whereas in the case in hand, the additional charge was not in the same office but of another post of Director at a place around 300 kms. away. In the other cases cited above, additional remuneration was found to be not permissible because it was held that the formal order of appointment to hold the additional charge of the other post was not issued by the competent (appointing) authority. We, however, find that in the present case, the respondents have nowhere taken any plea about the order of additional charge having been issued by an authority which was not competent to issue the formal order. In the



absence of any such objection taken by the respondents, they are now estopped to raise it at the fag end of arguments.

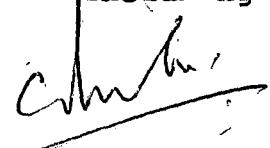
We notice that the respondents have neither taken any such objection in their reply nor in the additional counter they ~~fix~~ filed as reply to the rejoinder. Thus, they not only did not allow an opportunity to the applicant to have his say with regard to such an objection but also failed to file any supporting documents/rules/instructions etc. to establish that the Development Commissioner in the Ministry of Industry, Department of Industrial Development is either not competent or had not obtained the necessary approval of the competent authority, before the letter dated 6.6.88 was issued. We are, therefore, of the opinion that the respondents are now, at this stage, estopped for raising the question of competency. In this connection, we find support ~~to~~ from the judgement rendered by Hon'ble the Supreme Court in the case of Meghraj Urkundji Temple v. S.O. Maharashtra, 1999 (2) SLJ 130, wherein it was, inter alia, held that in the absence of pleadings, a plea cannot be considered.

13. There are special facts and circumstances involved in this case. We find that the applicant has not only



performed the duties of Director, HTDDTC, Nagaur, but helped in the development of Centre as mentioned earlier and the fact that it was for the respondents to clearly define the duties being entrusted to the applicant as far as the additional charge was concerned in terms of Government of India, DOPT letter dated 11.8.89 (Ann.A/9). We also feel that the case involves fixation of pay of the applicant in terms of FR-49(iii) and in that sense, it is a case of recurring cause of action. In view of this, we think it just and proper to condone the delay in this particular case.

14. We, therefore, dispose of this OA by directing the respondents to treat the applicant as having been formally ~~appd~~ appointed to hold the charge of the Director of the HTDDTC, Nagaur, as also the concurrence of the Ministry of Finance having been obtained for continuation of payment of the additional pay beyond the period of three months and thereafter extend the benefits available under FR-49(iii) to the applicant w.e.f. 9.6.88 till 30.6.91 with payment of arrears. The retiral benefits, including pension of the applicant, may also be refixed



if permissible under the rules. This direction may be  
complied within six months of the date of receipt of a  
copy of this order.

Parties to bear their own costs.



(N.P.NAWANI)

MEMBER (A)



(S.K.AGARWAL)

MEMBER (J)