

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR.

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Original Application No. 229 of 1998
this the 24th day of February '2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Prakash Keshav Thorat, aged about 42 years, S/o late Keshav Aba
Thorat, 514 Sundarnagar, Raipur.

Applicant.

By Advocate : Sri S.K. Nagpal.

Versus.

1. Union of India through the Secretary, Ministry of Mines,
Shastri Bhawan, New Delhi.
2. The Director General, Geological Survey of India,
Central Headquarters, 27 Jawahar Lal Nehru Road,
Calcutta.

Respondents.

By Advocate : Sri S.A. Dharmadhikari for Sri S.C. Sharma.

O R D E R

By this O.A., the applicant has challenged in-action
on the part of the respondents for not paying additional or
extra pay/remuneration as per the existing service rules for
discharging the duties of higher post as ordered by the respon-
dent no.2.

2. It is submitted by the applicant that while working as
Geologist (Jr.) at project 25, Kotri Belt, OP MP III Raipur,
he was posted to Training Institute with headquarters at Raipur
Office of the MP III as Officer Incharge in public interest.
The applicant reported for duty at the new office on 1.8.1996
and took over the charge of Officer-in-Charge from Sri V.P.
Misra, ^{the Director.} ~~who~~ He had been discharging the duties of Director

in the Training Institute, Raipur Centre and since no regular incumbent was posted, he gave an application for granting him extra/special remuneration as admissible under rules on 8.7.97 (Annexure-6), but in spite of several representations to this effect, no response was given by the respondents, even though the work of higher grade was taken from the applicant as head of the Institute. Therefore, the applicant had no other option, but to file the present O.A. He has further submitted that the post of Director was in the pay-scale of Rs.3700-5000/- revised to Rs.12000-16500, whereas the applicant was in the pay-scale of Rs.2200-4000/- revised to Rs.8000-13500/- at the time when he was posted as Incharge in place of existing Director which is two steps higher than the post held by him. He has further submitted that according to Rule 49 (iii) of FR, he is entitled to get the pay of the higher post or 10% of the pay of additional post since he had been continuing to discharge the duties of higher post uninterruptedly in public interest.

3. The O.A. is opposed by the respondents, who have stated that the applicant is claiming ~~for~~ salary of a post which is two grades above the post he was holding for which the appointment was to be made by the UPSC and since he was not even entitled to be promoted on the post of Director, he is not entitled for salary of the post of Director. They have further submitted that the applicant was mainly acting as Drawing & Disbursing Officer (In short DDO) of the Training Institute at Raipur since he was the only officer available at that time and even though Sri V.P. Misra was looking after the Centre as the Director, there was no sufficient technical job for him as the training courses are not continuously held at Raipur Training Centre. They have further submitted that since the applicant was only Geologist (Jr.), he could not have acted as a Director in any division, nor was he asked to hold the charge of the post of Director. Since it was only

a steep gap arrangement and he was also getting an extra allowance of 15% of the Basic pay being a member of the faculty, he would not be entitled to get the salary for the post of Director as he was posted there due to administrative reasons. More-over in Ranchi Centre ^{also} one Geologist (Sr.) is acting as Officer Incharge, but he has not asked for any extra remuneration. They have, thus, submitted that the applicant cannot be granted any relief as claimed by him as he was never promoted on the post of Director either on regular or on adhoc basis.

4. I have heard both the counsel and perused the pleadings as well.

5. It would be relevant to quote the order dated 15.7.96 which for ready reference reads as under :

"Sri P.K. Thorat, Geologist (Jr.) GSI is hereby transferred from Project 25, Kotri Belt, OP MP-III CR Raipur to Training Institute Raipur Centre GSITI with immediate effect in the interest of public service. He will act as Officer-in-Charge of Training Centre with Headquarters at Raipur Office of the MP-III.

Sri V.P. Misra, Director, GSI will be relieved of his charge/duties of Training Institute at Raipur as soon as Shri P.K. Thorat takes over charge of the Training Institute."

6. Perusal of the order clearly shows that the applicant who was Geologist (Jr.) was transferred from Project 25 to Training Institute, Raipur Centre in public interest and he was asked to act as Officer-in-Charge of Training Centre with Headquarters at Raipur office of the MP-III and he was ^{to} relieved Sri V.P. Misra, who was Director ~~and~~. Admittedly, the post of Director is in a higher grade i.e. Rs.3700-5000/- revised to Rs.12000-16500/-, whereas the scale of Geologist (Jr.) was only Rs.2200-4000/- revised to Rs.8000-13500/-. It is not disputed by the respondents that the applicant was posted as Officer-in-Charge in the Institute in place of Director, all that they

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have stated ^{is 12} that the post of Director was to be filled-up by UPSC and the applicant was not even in the feeder grade, therefore, he could not have been promoted on the said post. It is nobody's case that the applicant should be promoted as a Director in the Institute, all that he is claiming ^{is 12} that since he had been made to work at the higher post, he should be paid extra remuneration for having discharged the duties of higher grade. The respondents in their reply have stated that he was mainly acting as DDO for group 'D' employees, which is not reflected from the order dated 15.7.1996 because this order shows that he was infact transferred from GSI to Training Centre with Headquarters at Raipur Office of the MP-III and was asked to act as Officer-in-Charge also ¹, that he had to relieve the Director of the Institute. Therefore, it goes without saying that as Officer-in-Charge of the Training Centre, he would have performed all the duties which were attached to the post and since he did perform those duties, in my considered view, he would be entitled to get the higher remuneration as well. In this connection, I would like to quote the view taken by the Hon'ble Supreme Court in few judgments.

7. In the case of Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma & Others (1998) 5 SCC 87, the Hon'ble Supreme has held as under :

" ----The Tribunal was also justified in ordering payment of salary to the respondent for the post of Junior Engineer I with effect from 1990 when he was made to work on that post. It is true that the respondent, to begin with, was promoted in stop-gap arrangement as Junior Engineer I but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop gap arrangement."

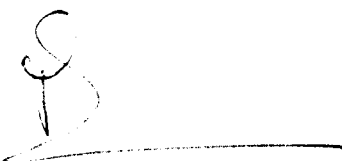
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8. Similarly in the case of Selvaraj Vs. LT. Governor of Island, Port Blair & Ors. (1998) 4 SCC 291), it was held as under :

"It is not in dispute that the appellant looked after the duties of Secretary (Scouts) from the date of the order and his salary was to be drawn against the post of Secretary (Scouts) under GFR 77. Still he was not paid the said salary for the work done by him as Secretary (Scouts). It is of course true that the appellant was not regularly promoted to the said post. It is also true as stated in the counter-affidavit of Deputy Resident Commissioner, Andaman & Nicobar Administration that the appellant was regularly posted in the pay-scale of Rs.1200-2040 and he was asked to look after the duties of Secretary (Scouts) as per the order aforesaid. It is also true that had this arrangement not been done, he would have to be transferred to the interior islands where the post of PST was available, but the appellant was keen to stay in Port Blair as averred in the said Counter. However, in our view, these averments in the counter will not change the real position. Fact remains that the appellant has worked on the higher post though temporarily and in an officiating capacity pursuant to the aforesaid order and his salary was to be drawn during that time against the post of Secretary (Scouts). It is also not in dispute that the salary attached to the post of Secretary (Scouts) was in the pay-scale of 1640-2900. Consequently, on the principle of quantum meruit the respondents authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. This limited relief is required to be given to the appellant on this ground."

9. In view of the principle laid down in Selvaraj' case (supra) I think that the present case would be fully covered by the ratio as in the instant case the applicant was in fact transferred against the post of Director of the Training Centre, so naturally the salary would have been drawn against the post of Director.

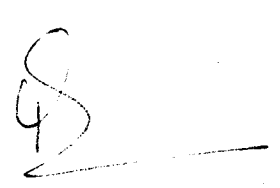
10. There is yet another judgment reported in 2002 SCC (L&S) 9 in re. Dwarika Prasad Tiwari Vs. M.P. State Road Transport Corporation & Another wherein the Hon'ble Supreme Court again reiterated the same view that even though simply because the



person was asked to officiate on the higher post, he could not claim regular promotion to the said post, but nonetheless for the period for which the appellants had discharged their duties or are discharging their duties attached to the higher post, they should be paid higher emoluments as attached to that higher post. Therefore, the present case is fully covered by the judgments given by the Hon'ble Supreme Court and I am of the view that the applicant would be entitled to the difference of emoluments which were attached to the post on which he was asked to perform his duties. It would also be relevant to mention here that I had asked ^a ~~the~~ specific query to the respondents' counsel to explain as to how he was given 15% allowance to which I was informed that it was only by virtue of being the member of faculty, that he was given 15% allowance of the Basic pay. It would be open to the respondents to adjust that amount by calculating the difference of arrears which the applicant would be entitled to for having discharged the duties of higher post.

11. In view of the aforesaid, the respondents are directed to calculate the amount which the applicant would be entitled to ~~only~~ the higher grade for the period he was made to discharge the functions of higher post and then make payment to him after adjusting the amount already paid to him. This exercise shall be completed by the respondents within a period of three months from the date of receipt of copy of this order.

12. With the above direction, the O.A. stands allowed with no order as to costs.


(Mrs. Meera Chhibber)
Member (J)

GIRISH/-

Issued
on 26.2.03
BB

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिलिपि आगे भिजल :-

- (1) सतिन, उच्च न्यायालय नगर एसेसिशन, जबलपुर
- (2) जलपान सं. विवरण/मु. के काउंसल
- (3) प्रचलित पी/एनसी/यु. के काउंसल
- (4) जलपान, को. प्र. न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु

Shastri
उप रेजिस्ट्रार 26/2/03

SY Nagpal. ACI
SA. Shastri. AE