

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH**

OA No.149/2006

This the 19th day of July, 2010

**HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.K.S.SUGATHAN, ADMINISTRATIVE MEMBER**

O.P.Dubey
s/o Late Shri Gopal Lal Sharma,
r/o Betal Mohalla, Purani Deeg,
District Bharatpur, retired from the post of
Post Master, Deeg Head Post Office,
District Bharatpur.

.. Applicant

(By Advocate: Mr. C.B.Sharma)

Versus

1. The Union of India
through Secretary to the Govt. of India,
Department of Posts,
Ministry of Communication &
Information Technology,
Dak Bhawan,
New Delhi.
2. Principal Chief Post Master General,
Rajasthan Circle,
Jaipur
3. Superintendent of Post Offices,
Bharatpur Postal Division,
Bharatpur.
4. Post Master,
Deeg Head Office,
Deeg, District Bharatpur.

.. Respondents

(By Advocate:)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) That the respondents may be directed to fix the pay of the applicant in the scale of Rs. 65000-10500 at the stage of Rs. 7700/7900 in the month of March, 2005/July, 2005 and to extend benefits of due fixation with pensionary benefits including gratuity, leave encashment, commutation and pension with all consequential benefits.
- (ii) That the respondents be further directed to revise pension of the applicant with effect from 1/11/2005 after due fixation in the scale of Rs. 6500-10500 with all consequential benefits.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

2. Briefly stated, facts of the case are that one Shri Bhajan Lal Verma who was functioning as regular Postmaster HSG-I, Deeg ~~was~~ accepted voluntary retirement w.e.f. 5.2.2005 and charge of the said post was given to Shri Tej Singh, Senior Postal Assistant (BCR), Deeg on 5.2.2005 as the applicant was on medical leave on that day. On returning from leave, the charge of Postmaster, Deeg Head Office was handed over to the applicant on 11.3.2005 who was senior most official. As can be seen from the reply filed by the respondents, the applicant applied for two days' Casual Leave w.e.f. 25.7.2005 to 26.7.2005 which was granted to the applicant. It is

further averred in the reply that the applicant did not return to the duty after expiry of the leave period and produced sickness certificate seeking leave for the period 28.7.2005 to 3.8.2005 and further extended the leave on medical certificate upto 29.10.2005. The applicant joined his duty on 29.10.2005 (Afternoon) and retired on superannuation on 31.10.2005. The grievance of the applicant in this case is that he is entitled for salary of the post of Postmaster w.e.f. 11.3.2005 to 24.5.2005 and 29.10.2005 to 31.10.2005 when he has performed duties of the higher post. The applicant has also made representation which was also rejected vide order dated 13.1.2006 (Ann.A/1). It is this order which is under challenge in this OA.

3. As can be seen from Ann.A/1, the claim of the applicant was denied on the basis of the Department of Personnel and Training order dated 4.12.2003 which stipulates that officiating promotion is to be given to the officials who are eligible for the post as per recruitment rules. It is further stated that the applicant was ordered to look after the work of Postmaster, Deeg H.O. in addition to his own work without any remuneration. Thus claim of the applicant was not covered under the rules.

4. We have heard the learned counsel for the applicant. We are of the view that the applicant is not entitled to any relief on the basis of decision rendered by this Bench in the case of Radhey Shyam Sharma vs. Union of India and Ors., OA No.368/2006, decided on 24th July, 2008 whereby similar contention was raised and this Tribunal in Paragraphs 7 to 9 has made the following observations:-

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"7. Law on this point is no longer res-integra and the same stood decided by judgments rendered by the Hon'ble Apex Court as well as by Hon'ble High Court. The matter was considered by the Hon'ble Courts, on the basis of provisions contained in FR-49 on which reliance has been placed by the learned counsel for the applicant. The Hon'ble Courts have repeatedly held that benefit of salary of higher post can be given only if a person is appointed on the post and not otherwise. At this stage, it will be useful to quote a decision of the Guwahati High Court in the case of Golap Chandra Chetia vs. The Assam Administrative Tribunal, Guwahati and ors., 2004 (4) SLR 500 whereby the Hon'ble High Court in Para 3 and 4 has made the following observations:-

"3. It is contended by the counsel for the appellant before us that by virtue of FR-49 he having worked on the post of Financial Adviser for more than 39 days he is entitled for fixation of the salary on the basis of FR 49. The relevant portion of FR 49 reads as under:

"FR 49- The State 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) Where a Government servant is formally appointed to hold full charge of the duties of a higher post or posts which is or are in the same office as his own and in the same cadre line of promotion, in addition to his ordinary duties, he shall be allowed the pay of the higher post, or the ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 39 days:

Provided that the concurrence of the Financial Department shall be obtained for making such arrangements and for payment of additional pay."

4. It is amply clear from FR 49 (a) that a Government servant can be asked by the Government to hold substantively, as a temporary measure, or to officiate in, two or more independent posts at one time and in that case his pay shall be regulated as provided under Clause (a) of FR 49 on fulfilling other conditions mentioned therein. The necessary condition for application of FR 49 is appointment on two or more (sic) independent posts at one time. We have gone through the orders issued by the Government wherein the appellant was directed to hold the charge of the Financial Adviser in the Health and Family Welfare Department from this it is clear that he has not been appointed on the post of Financial Adviser but he has

been directed to hold the charge of the post. In the absence of any appointment in the post, FR 49 has no application as it stood before its amendment in 1991. That being the case, we do not find any infirmity in the orders passed by the Tribunal as well as by the learned single judge."

8. Further the Apex Court in the case of Mohd. Swaleh vs. Union of India and Ors., 1998 (1) SLJ 1 has held that a person who was deputed to hold current charge of duties of Registrar cannot claim remuneration of the said post. That was a case where the appellant therein was deputed to work as Registrar in addition to his duties of Deputy Registrar by the Chairman, Central Administrative Tribunal. The Appellant demanded pay of the higher grade. The Hon'ble Apex Court held that since no promotion can be made by the Chairman, as such, higher pay cannot be allowed and the condition laid down in FR-49 is not satisfied.

In the instant case also, the applicant could not have been promoted on the higher post as he does not fulfill qualification. On that parity, the applicant is not entitled to grant of higher pay scale. The Hon'ble Apex Court also held that principle of 'quantum merit' is not applicable where the field governed by the specific statutory rules namely Rule 49 of FRs and such principle is attracted where liability arises under the Contract Act. At this stage, it will be useful to quote para 24 of the judgment, which thus reads:-

"24. Learned counsel for the appellant made a submission that the principle of quantum meruit (sic) would apply to the facts of the case and relied upon the decision of the Supreme Court in State of West Bengal vs. B.K.Mondal and Sons., AIR 1962 SC 779. In that case it was held that though the contract for certain works was not executed as per the provisions of Section 179 (3) of the Government of India Act, still compensation could be paid under Section 70 of the Contract Act. In our view the said decision which is based on Section 70 of the Contract Act is not applicable to the present situation where the field is governed by specific statutory rules namely Rule 49 of the Fundamental Rules."

Thus, according to us, the applicant is not entitled to any relief.

9. The learned counsel for the applicant has placed reliance on the decision of this Tribunal in OA No.371/04 decided on 17.2.2007, M.L.Malvia vs. Union of India and ors. whereby while relying on the judgment of the Apex Court in the case of Selva Raj vs. Lt. Governor of Island, Port Blair and Others, AIR 1999 SC 838 has granted relief of officiating allowance to the applicant therein as prescribed under FR-49 without discussing as to how the provisions of FR-49 are

attracted on the principle of 'quantum merit'. Thus according to us, the applicant cannot take assistance from this judgment. Further, the principle of quantum merit is not attracted in the instance case as held by the Apex Court in the case of Mohd. Swaleh (supra) relevant portion of which has been reproduced hereinabove.

Further, this Bench in the case of M.L.Malvia (supra) has relied on the judgment mechanically without going into the facts and circumstances of the case under which the said judgment was rendered by the Apex Court. That was a case where the appellant therein was transferred to look after the duties of Secretary (Scout) with immediate effect. It was further mentioned that his pay was to be drawn against the post of Secretary (Scout) under GFR 77. It was in the context of these facts, the Apex Court held that when the applicant has been appointed against the post of Secretary and it has been mentioned in the order that his pay will be drawn against that post, under such circumstances, the appellant is entitled to the scale of the said post. Thus, the judgment was rendered in the facts and circumstances mentioned above and it was on that context that Hon'ble Apex Court has observed that quantum merit is attracted in this case. The present is not the case of such nature. As already stated above, the order specifically mentioned that the applicant will perform current duties of the higher post in addition to his duties without any extra remuneration. Thus, the applicant cannot take any assistance from the judgment in M.L.Malvia (supra) case which has been affirmed by the High Court.

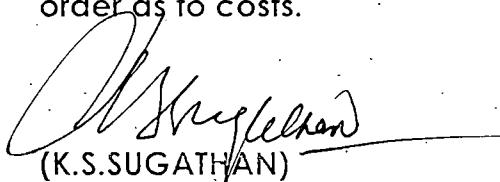
The findings given by this Tribunal in the case of Radhey Shyam Sharma (supra), as reproduced above, is squarely applicable in the facts and circumstances of this case. As such, the applicant is not entitled to the pay scale of the post of Postmaster.

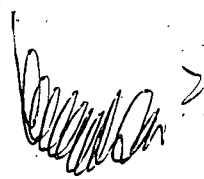
5. The reliance placed by the learned counsel for the applicant on the judgment rendered by the Madras High Court in the case of Union of India and Ors. vs. Central Administrative Tribunal and Anr., 2004 (1) ATJ 24 and another decision of the Lucknow Bench of this Tribunal in the case of Ganga Ram vs. Union of India and ors., 2006 (2) ATJ 628 is of no assistance to the applicant in the light of the decision rendered by the Hon'ble Apex Court, as noticed above.

Further, as can be seen from the judgment rendered by the Madras High Court, the respondent in that case was promoted from Lower Selection Grade to Higher Selection Grade-II on ad-hoc basis and thereafter he was further promoted on ad-hoc basis to the post of HSG-I. The benefit of higher pay scale was denied on the ground that the respondent was promoted in stop gap arrangement. It was under these factual aspect, relief was granted to the applicant. As already stated above, the instant case was not of such nature. The applicant was not promoted in HSG-I and he could not have been promoted even on ad-hoc or officiating basis as he was not eligible for such promotion as per rules. Thus, so long as the applicant is promoted on officiating/ad-hoc/regular basis by the competent authority, the applicant is not entitled to any relief in terms of the law laid down by the Apex Court as noticed in the case of Radhey Shyam (supra). Similarly, the applicant cannot draw any assistance from the judgment of the Lucknow Bench whereby the applicant was qualified to perform duty of Shunting Jamadar and was put to officiate against the same. As can be seen from the facts of this case, the applicant was only holding additional charge of the post of Postmaster as stop-gap arrangement, thus was not entitled to any relief. Further, the reliance placed by the applicant to the judgment of Secretary cum Chief Engineer, Chandigarh vs. Hari Om Sharma and Ors, 1998 SCC (L&S) 1273 is also of no assistance to the applicant. As can be seen from para 4 to 6 of the judgment, the respondents before the Apex Court was promoted as Junior Engineer-I in 1990 and had been continuing on that post without

being paid salary of the post or without being promoted on regular basis. It was under this context, the Apex Court held that no doubt, the respondent was promoted as Junior Engineer-I as stop gap but that by itself would make no difference to his claim of salary of that post and it was under this context, the Apex Court held that if a person who has been put to officiate with higher post with greater responsibility, he is normally entitled to salary of the post. The instant case is not of such nature. In the present case, the applicant was only handed over additional charge of the post of Postmaster in addition to his own duty. As such, he is not entitled to salary of the post of Postmaster. Had the applicant been promoted to the post of Postmaster by the competent authority either on ad-hoc basis or on officiating basis by issuing orders in that behalf, in that eventuality, the applicant would have been entitled to the pay scale of the higher post.

6. Thus, we are of the view that the applicant has not made out a case for our interference. Accordingly, the OA is dismissed with no order as to costs.


(K.S. SUGATHAN)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

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