

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 15th day October, 2010

ORIGINAL APPLICATION No.230/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

M.C.Agrawal
s/o Shri Murari Lal Agrawal,
r/o 1/404, Malviya Nagar,
Jaipur, presently working
in the office of Head Record Office
as AHRO -I, Opp. Radio Station,
M.I.Road, Jaipur

.. Applicant

(By Advocate: Shri P.N.Jatti)

Versus

1. Union of India through the Secretary to the Govt. of India,
Department of Posts, Dak Bhawan, Sansad Marg, New Delhi.
2. Chief Postmaster General, Rajasthan Circle, Jaipur
3. Senior Superintendent, Railway Mail Service, JP Dn., Jaipur
4. The Head Record Officer, Railway Mail Service, JP Dn., Jaipur

.. Respondents

(By Advocate: Shri Brajesh Dhabai, proxy counsel for Mr. Tej Prakash
Sharma)

[Signature]

ORDER (ORAL)

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

- 8.1 That by a suitable writ/order or the direction the impugned order dated 01.12.2005.
- 8.2 That by a suitable writ/order or the direction the respondents be directed to draw the pay and allowances of HSG-I that is 6500-10500 for a period of 343 days as mentioned in Annexure A/2 ordered by the competent authority.
- 8.3 Any other relief which the hon'ble bench deems fit."

2. Briefly stated, facts of the case are that the applicant while working as Assistant Head Record Officer (AHRO) was directed to look after the work of Head Record Officer (HSG-I), RMS, Jaipur Division, Jaipur, which post was fallen vacant on account of superannuation of Shri Badri Prasad w.e.f. 30.6.2003, vide letter dated 1.7.2003 (Ann.A/4). As can be seen from the said letter it was a local arrangement without any extra remuneration till regular arrangement is made by the C.O. Jaipur. The applicant held additional charge of the said post w.e.f. 1.7.2003 till 12.9.2004 in 10 different spells, details of which has been given in Ann.A/3. It may be stated that only in three spells of 90 days, 42 days and 37 days the applicant has worked in other spells for 31 or less than 31 days. It may be further stated that vide Memo dated 12.7.2004, the applicant was authorised to work as Drawing and Disbursing Officer w.e.f. 12.7.2004 and it was further mentioned in that Memo that he will look after the current duties of the post of HRO RMS, JP Division,

Jaipur. It is on the basis of these facts the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. For the purpose of aforesaid relief, reliance has been placed by the applicant on FR-49. The applicant has also made representation to the authorities which was rejected vide impugned order Ann.A/1 on the ground that as per DoPT order dated 4.12.2003 officiating promotion is to be given to the officials who are eligible for the post as per recruitment rules. Since the applicant was ordered to look after the work of HRO (HSG-I) in addition to his own work without any remuneration, as the applicant did not fulfill the eligibility condition for promotion to HSG-I, as such, his claim was not covered under the rules and therefore, he was not entitled for payment of officiating pay of the post of HRO and his representation was rejected. It is this impugned order dated 1.11/12.2005 which is under challenge.

4. Notice of this application was given to the respondents. The respondents have filed reply. The stand taken by the respondents in the reply is same as given in the impugned order Ann.A/1 that as per DOPT Order No. AB/14017/54/2003 Estt (PR) dated 4.12.2003 officiating promotion is to be given to the officials who are eligible for the post as per recruitment rules and the applicant was ordered locally to look after the work of HRO, RMS, Jaipur Division, Jaipur without any extra remuneration. Since the applicant do not possess requisite qualification for promotion to HSG-I, thus, his claim of officiating pay is not covered under the rules.

5. The applicant has also filed rejoinder thereby reiterating the stand taken by him in the OA.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

7. Before we proceed further, it may be useful to quote, order dated 1.7.2003 in extenso whereby the applicant was asked to perform the current duty of the higher post and thus reads:-

"Subject : Local arrangement against the post of HSG.I HRO
RMS JP Dn. Jaipur

Consequent upon retirement of Shri Badri Prasad HRO RMS 'JP' Division Jaipur on his superannuation on 30/6/2003, the post of HRO (HSG.I) RMS JP Dn. Jaipur has become vacant w.e.f. 1/7/2003. Shri M.C. Agarwal AHRO I will look after the work of HRO (HSG-I) RMS JP Dn. Jaipur without any remuneration till regular arrangement is made by the C.O. Jaipur. (emphasis to underline)

Thus from perusal of the aforesaid order, it is clear that the applicant was authorized to work on the higher post without any extra remuneration and it is clearly mentioned in the said order that the applicant will perform current duties of the higher post. Admittedly, the applicant has not been given appointment on the higher post of HSG-I. According to us, the applicant is not entitled to any relief as the applicant was asked to hold current charge of the duties of the higher post.

8. Law on this point is no longer res-integra and the same stands decided by judgments rendered by this Tribunal in OA No.368/2006, Radhey Shyam Sharma vs. UOI, decided on 24th July,

2008, whereby in para 7 this Tribunal has made the following observations:-

"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 quota 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."

9. Besides this, FR 49 (v) specifically stipulates that no additional pay shall be admissible to a Govt. servant who is appointed to hold current charge of the routine duties of another post. At this stage, it will be useful to quote FR 49(v), which thus reads:-

"F.R.49. The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate as a temporary measure, in one or more of other independent posts at one time under the Government. In such cases, his pay is regulated as follows:-

- (i)....
- (ii)....
- (iii).....
- (iv).....

(v) no additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge;"

Thus, in terms of the provisions as quoted above, if appointment of the applicant on the post of HSG-I is to be held in the officiating capacity, even then no additional pay shall be admissible where the appointment was a local arrangement or the Govt. servant has been asked to perform current charge of the duties of the said post in terms of FR-49(v).

10. Further, the applicant also could not have been appointed in officiating capacity on the higher post dehors the rules as he was

not eligible for promotion to the post of HSG-I norm based as per recruitment rules. The applicant was granted financial upgradation to the post of HSG-II under ACP scheme. Thus, according to us, the applicant is not entitled to any relief on this score also.

11. 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.

12. The learned counsel for the applicant has placed reliance 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. We fail to understand how the applicant can take assistance from this judgment. 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 mentions 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.

13. Similarly, the reliance placed by the applicant to the judgment rendered by the Jabalpur Bench of the Tribunal in OA No.793/2007, Radhey Lal Goud vs. UOI decided on 12.3.2008 is of no consequence as neither the impact of FR-49 was considered nor the question of eligibility to hold the post was in question. Further, the judgment of Mohd. Swaleh (supra) was also not considered in that case. Being merely asked to work on a higher post cannot be treated as promotion so as to hold entitle for the pay scale of higher post.

14. The learned counsel for the applicant further argued that in case the applicant is not held entitled to the pay scale of the higher post, in that eventuality, the respondents may be directed to consider case of the applicant for charge allowance/presumptive pay for performing duties of the higher post. The applicant has not made any representation qua this aspect before the authorities. However, we are of the view that the matter is required to be

considered on this aspect, which also find support from the judgment of the Apex Court in the case of Ramakant Shripad Sinai Avalpalkar vs. Union of India and ors., 1992 SCC (L&S) 115 whereby the Apex Court has held that being merely asked to work on a higher post cannot be treated as promotion. In such a case the person is not entitled to get salary of the higher post but gets only what in service parlance is called a 'charge allowance'. For that purpose, the applicant may make representation before the authorities within a period of one month and the respondents are directed to consider the case of the applicant regarding grant of extra amount/presumptive pay within a period of three months from the date of receipt of representation.

15. With these observations, the OA shall stand disposed of with no order as to costs.

16. In view of disposal of the OA, no order is required to be passed in MA No.185/2007, which is accordingly disposed of.

Anil Kumar
(ANIL KUMAR)
Admn. Member

M.L.Chauhan
(M.L.CHAUHAN)
Judl. Member

R/