

Date 10.03.2014

OA No 315/2010 (Nawrang Singh Vs B.S.N.L)

The advocates are abstaining from
Work.

Court adjourned on the request of
Learned Counsel for Appellant (A) &
Respondent (B). Date for hearing
11/3/2014

At. 11-03-2014

The advocates are abstaining
from work.

Court adjourned on the request of
Learned Counsel for Appellant (A) &
Respondent (B). Date for hearing

12/03/2014

12/03/2014

O.A. No. 315/2010

Mr. P. N. Jatti, learned counsel for the applicant
Mr. Mukesh Agarwal, learned counsel for the respondent No. 1.
Mr. T. P. Sharma, learned counsel for the respondent No. 2 to 4.

Heard the learned counsel for the parties.

Order Reserved.

(M. Nagayyan)

Member (S)

At. 25/3/2014

Order pronounced today via the open court by
the Bench.

Anil Kumar

(Anil Kumar)

Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Hon'ble Mr.Anil Kumar, Member-A

Draft order in O.A.No.315 of 2010 is sent for consideration please. If agreed then, I hereby authorise to pronounce the order on behalf of the Bench under Rule 106 of CAT Practice Rules, 1993 and if not agreed, then the disagreement note may be written and signed.

मनोज
(M.Nagarajan)
Member (J)

Hon'ble Member-A

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 315/2010

Order reserved on: 12.03.2014

Order pronounced on: 25.3.2014

CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER**

Naurang Singh S/o Shri Chandra Ram, by caste Jat, aged about 63 years, R/o 8/196, Vidhya Dhar Nagar, Jaipur, presently retd. as Chief Accounts Officer from the office of the General Manager Telecom District, Jhunjhunu.

...Applicant

Mr. P.N. Jatti, counsel for applicant.

VERSUS

1. Union of India through the Secretary to the Department of Telecom, Sanchar Bhawan, New Delhi.
2. Union of India through the Chief Managing Director, Bharat Sanchar Nigam Ltd., Sanchar Bhawan, New Delhi.
3. Chief General Manager Telecom, Rajasthan Circle, Jaipur-8.
4. General Manager, Telecom District, Jhunjhunu.

...Respondents

Mr. Mukesh Agarwal, counsel for respondent no. 1.

Mr. T.P. Sharma, counsel for respondent nos. 2 to 4.

ORDER

(Per Mr. M. Nagarajan, Judicial Member)

1. The grievance of the applicant in this O.A. is relating to pay fixation. His specific claim is that the respondents should have fixed his pay with effect from 23.08.2005 to 31.08.2006 in the

T. H. S.P.

pay scale attached to the post of Deputy General Manager (Finance).

2. In support of the claim made by the applicant for fixing his pay in the post of Deputy General Manager (Finance), the facts stated by the applicant in his OA are that he was appointed as Senior Accounts Officer in the pay scale of Rs. 13000-350-18250. Thereafter, he was posted as Assistant Chief Accounts Officer with effect from 11.07.2002, and subsequently by order dated 30.06.2003 (Annexure A/3) he was posted as Chief Accounts Officer O/o GMTD, Jhunjhunu. While working as Chief Accounts Officer at Jhunjhunu, by order dated 23.08.2005 (Annexure A/6), he was directed to act as IFA to GMTD Jhunjhunu in addition to his work. In view of the fact that under the said order dated 23.08.2005, he was directed to act as IFA to GMTD Jhunjhunu, he shall be allowed the pay admissible to the post of Dy. General Manager. In this connection, he has been making representation with a request to fix his pay in the higher pay scale of Rs. 16000-400-20800 with effect from 23.08.2005 i.e. the day on which he took the charge of the post of DGM/IFA, but his request was not considered by the respondents, hence, he filed the Original Application seeking a direction to the respondents to fix his pay in the higher pay scale of Rs. 16000-400-20800 with effect from 23.08.2005 i.e. the date on which he has taken the charge of the post of DGM / IFA.

R. U. 4P

3. The respondents have filed their reply contending that the applicant is not entitled for the pay fixation as claimed by him. The specific stand of the respondents in their reply is that neither the CGM office nor the GMTD Jhunjhunu office has ordered the applicant to work as DGM in the office of GMTD, Jhunjhunu. It is contended therein in view of the fact that the order dated 23.08.2005 (Annexure A/6) under which he was directed to act as IFA to GMTD, Jhunjhunu is not issued by a competent authority, he is not entitled for the pay fixation as claimed by him.

4. Heard the learned counsel for the applicant Shri P.N. Jatti, learned counsel for the respondent no. 1 Shri Mukesh Agarwal and learned counsel for the respondent nos. 2 to 4 Shri T.P. Sharma. Perused the pleadings and the documents annexed to the pleadings of the respective parties.

5. The issue involved in this Q.A. is to the effect whether the applicant is entitled for fixation of pay attached to the post of Dy. General Manager (Finance) / Internal Financial Advisor on the ground that under the said order dated 23.08.2005 (Annexure A/6), he was directed to act as IFA to GMTD, Jhunjhunu in addition to his work. When we turn to the order dated 23.08.2005 under which the applicant was directed to act as IFA to GMTD, Jhunjhunu in addition to his work, we find the

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following recital as per the order No. E-2/GO's/Ch-VI/2005-06/96 dated at JJN the 23.08.2005 -

"In accordance with the orders contained in the Chief General Manager Telecom Jaipur Memo No. STA/8-5/JAG-SAG/F&A/III/118 dated 04-06-2005, Sh. M.B. Choudhary, Dy. General Manager (Finance) of this office is hereby relieved in the A/N of 23-8-2005 with instructions to report to GMTD Sriganganagar for further duties.

Shri Navrang Singh, Chief Accounts Officer of this office will act as IFA to GMTD Jhunjhunu in addition to his work without any extra remuneration.

TA/TP is permissible as per rules."

A plain reading of the aforesaid order dated 23.08.2005 makes it clear that the applicant while acting as IFA to GMTD, Jhunjhunu, as directed therein, is not entitled for any extra remuneration. On the other hand, he is entitled for only TA/TP as is permissible under the rules.

6. Shri P.N. Jatti, learned counsel for the applicant by inviting our attention to F.R. 49 of Fundamental Rules argued that in view of sub clause (i) of F.R. 49, the applicant shall be allowed the pay admissible to him to the post of Dy. General Manager.

The relevant portion of F.R. 49 reads as -

"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) Where a Government servant is formally appointed to hold full charge of the duties of a higher post 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 admissible to him, if he is appointed to officiate in the higher post, unless the Competent Authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post."

In view of the above Rule, for getting the pay fixed attached to the post of Dy. General Manager, the applicant has to satisfy the following ingredients of the above Rule that –

- (a) The appointment to the post of Deputy General Manager is made by the Central Government.
- (b) While the Central Government appoints him to hold full charge of the duties of a higher post of Deputy General Manager he was holding the post in a cadre which is feeder cadre to the post of Deputy General Manager in a substantive or officiating capacity.
- (c) He was appointed to hold the full charge duties of the post of Dy. General Manager at Jhunjhunu by a Competent Authority.
- (d) He was in the line of promotion to the post on which he was appointed under the said order dated 23.08.2005.

But there is no averment in the O.A. specifically mentioning that he was appointed to hold the full charge duties of the higher post namely Dy. General Manager at Jhunjhunu. Similarly, there is not even a single whisper in the entire O.A. whether he was in the line of promotion to hold the post of Dy. General Manager at Jhunjhunu. No averment to show that whether the order dated 23-8-2005 is by the Central Government and further that there

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is no specific averment that as on 23-8-2005, the post held by him on 23-8-2005 was in a substantive capacity.

7. The specific prayer of the applicant in the O.A. is that his pay should be fixed in the higher pay scale of Rs. 16000-400-20800 with effect from 23.08.2005 which is the pay scale attached to the post of Dy. General Manager. Admittedly, the basis for such claim is the order dated 23.08.2005 (Annexure A/6). In the said order dated 23.08.2005, as quoted above, it is not found that the applicant has been directed to act or hold the post of Dy. General Manager at Jhunjhunu. On the other hand, as already pointed out, he has been directed to act as IFA to GMTD, Jhunjhunu. The applicant in his pleadings; nowhere stated that Internal Financial Advisor (IFA) is an equivalent post to that of the post of Dy. General Manager (DGM). It is also not shown that the post of Deputy General Manager and the post of IFA to GMTD is one and the same. There is also no averment in the O.A. that the pay scale attached to the post of IFA and DGM is one and the same. Thus, in view of the fact that the averment in the OA relating to the above aspects lacks in material particulars for attracting the provisions of sub clause (i) of F.R. 49, it is difficult for us to issue any direction to the respondents as sought by the applicant.

8. It is very unfortunate that the respondents in their reply did not meet the specific claim of the applicant that he is entitled for

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fixation of pay in the pay scale of Rs. 16000-400-20800 in view of sub clause (i) of F.R. 49. As such, the respondents in their reply ought to have stated as to why the provisions of F.R.49 cannot be made applicable to the claim made by the applicant. Thus, in view of particulars, which are material, are lacking also, we are not in a position to deal with the claim of the applicant.

9. Under the circumstances, we are of the opinion that it is necessary to direct the respondents to treat the claim made by the applicant in the O.A. as his representation and to consider the same and pass appropriate orders bearing in mind whether the claim of the applicant falls under sub clause (i) of F.R. 49 or otherwise. While considering the O.A. as his representation, the respondents are also required to bear in mind the Government of India's orders issued under F.R. 49. Accordingly, the O.A. is disposed of directing the respondents to consider the claim of the applicant for fixing his pay in the pay scale of Rs. 16000-400-20800 under Rule 49 of Fundamental Rules with reference to the facts and circumstances under which by the order dated 23.08.2005, the applicant was directed to act as IFA to GMTD, Jhunjhunu and by examining whether the post of IFA and DGM is one and the same or not within 3 months from the date of receipt of a copy of this order.

10. The order that is required to be passed by the respondents in compliance of this order shall specifically mention the reason

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either for granting or for not granting the benefit with reference to the provisions contained under F.R.49 and the Government of India's orders/decisions issued under F.R.49.

There shall be no order as to costs.

M. Nagarajan
(M. NAGARAJAN)
JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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