

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1587/2015

New Delhi this the 24th day of August, 2016.

HON'BLE MR. P.K. BASU, MEMBER (A)

H.D. Nautiyal (Ex-Registrar), NCDRC
Age 61 years
r/o Z-22, HUDCO Place Extension
New Delhi – 110019.

.. Applicant

(By Advocate : Shri Naresh Kaushik with Ms. Joymoti Mize)

Versus

1. Union of India
Ministry of Consumer Affairs, Food & Public Distribution
Department of Consumer Affairs
Through its Secretary
Krishi Bhavan, New Delhi
2. Ministry of Consumer Affairs, Food & Public Distribution
Department of Consumer Affairs
Pay & Accounts Office
12-A, Jam Nagar House, New Delhi
3. National Consumer Dispute Redressal Commission
Through its Registrar
Upbhokta Nyay Bhawan
F Block, GPO Complex
INA, New Delhi – 110023
4. Department of Personnel & Training
Through its Secretary
North Block, New Delhi

..Respondents

(By Advocate : Dr. Ch. Shamshuddin Khan)

ORDER (ORAL)

Heard the learned counsel for the applicant as well as the learned counsel representing the respondents.

2. It is stated by the learned counsel for the respondents that counter reply has already been filed on behalf of respondent No.3, i.e. the National Consumer Dispute Redressal Commission, but no reply has been filed on behalf of respondents No.1, 2 and 4, though the reply is ready and will be filed shortly.

3. The issue is that the applicant was originally Joint Registrar in National Commission and was on deputation as Registrar in National Consumer Dispute Redressal Commission (NCDRC). His deputation period came to an end on 11.10.2013. Vide order dated 15.10.2013, NCDRC, while repatriating him to his parent cadre also ordered that the applicant, as an interim measure, is entrusted with the work of Registrar until further orders and that he will act as Head of the Office and shall draw the salary against the existing post of Registrar.

4. The learned counsel for the applicant also drew my attention to Annexure A-6, which is a communication dated 08.05.2014 of Appointment Committee of Cabinet (ACC) considering the case of the applicant, in which it is stated that the ACC has approved that

the present arrangement whereby Shri Nautiyal, who is holding the post of Joint Registrar and has been entrusted the post of Registrar as an interim measure may be allowed to stay till the date of retirement, i.e. 30.04.2014. Therefore, the applicant questions the order dated 26.05.2014 by which the respondents have sought recovery of Rs.1,90,581/- as an excess payment towards commutation of pension and leave encashment as well as salary drawn between 12.10.2013 to 30.04.2014.

5. From the reply of respondent No.3, it appears that this excess amount arises because of his repatriation to the post of Joint Registrar, which is a lower post, treating that the post to have been held by the applicant substantively and not the post of Registrar.

6. Learned counsel for the respondents, Dr. Ch. Shamsuddin Khan, insisted that the reply on behalf of respondents No.1, 2 and 4 will be filed shortly and that should be on record before this case is decided. I find that on the last date of hearing, i.e. on 26.07.2016, similar request was made by the respondents' counsel and it had been stated on that date that he will file reply on 29.07.2016, but no reply is there. I cannot permit adjournment in cases in such a manner.

7. Learned counsel for the respondents, first of all, raised the ground of limitation stating that the applicant had been repatriated vide office order dated 15.10.2013 and the O.A. has been filed in

2015. Secondly, it is argued that Hon'ble Supreme Court in **Mohd. Swaleh Vs. Union of India**, (1997) 6 SCC 200, has held that "A person is entitled for the payment of remuneration of a higher post only if he is formally appointed to the post by the Authority competent to make the appointment. Mere fact that an officer has been assigned to look after duties of a higher post does not entitle him for the pay and allowances of that post."

8. Thirdly, learned counsel relies on judgment of the Hon'ble Supreme Court in **Rati Lal Vs. State of Gujarat**, AIR 1990 SC 1132, in which it has been held that "appointment by deputation, extension or otherwise is not a matter of right. A deputationist can be reverted to his parent cadre at any time."

9. As regards limitation, it is not a valid ground because the order of recovery is dated 26.05.2014 and the O.A. has been filed on 23.04.2015 and, therefore, no limitation ground is made out.

10. As regards judgment of the Hon'ble Supreme Court in **Mohd. Swaleh** (supra) and **Rati Lal** (supra), I have examined the law settled by the Hon'ble Supreme Court in this regard. Hon'ble Supreme Court in **Selva Raj Vs. Lt. Governor of Island, Port Blair and others**, AIR 1999 SC 838, has held is that if a person has worked on the higher post though temporarily and in an officiating capacity, he is entitled to the higher pay. Similarly in **Dwarika**

Prasad Tiwari Vs. M.P. State Road Transport Corporation and another, 2002 SCC (L&S) 9, the ratio decided is in the last sentence of para 9 of the judgment, which reads as follows:

“9....We further make it clear that for the periods for which the appellants had discharged their duties or are discharging their duties attached to the higher post, they should be paid emoluments as attached to that higher post.”

11. Moreover, in **Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and ors.**, AIR 1998 SC 2909, the Hon'ble Supreme Court has reiterated the principle that when an employee was made to work on higher post with greater responsibilities, he is entitled to salary of that higher post.

12. In this case, there was a formal order by ACC that the applicant shall continue as Registrar (with duties of Registrar) till his retirement. Therefore, the objection of the learned counsel for the respondents is not valid as per law and is overruled.

13. Moreover, from the facts quoted above, the issue is crystal clear. The applicant had been asked to continue as Registrar till his retirement by none less than the ACC and communicated vide order dated 16.05.2013. Therefore, in accordance with that order, the applicant has retired holding the post of Registrar in NCDRC on 30.04.2014. In the light of that, order dated 26.05.2014 is quashed and set aside with a direction to the respondents to refund the amount of Rs.1,90,581/- recovered by them and also count the

service of the applicant between 12.10.2013 to 30.04.2014 as Registrar and grant consequential pensionary benefits. Time frame of 90 days is fixed for compliance of this order from the date of receipt of certified copy of this order.

14. With the above direction, the O.A. stands disposed of. No order as to costs.

(P.K. Basu)
Member (A)

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