

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1632/2012

New Delhi this the 18th day of September, 2015

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

Sh. B.S. Jarial S/o Late Shri G.S. Jarial
Aged 56 years, working as Dy. Supdt. Gr.I
Central Jail, Tihar
R/o H.No.996 Type V,
Central Jail Tihar, New Delhi ... Applicant

(Through Shri S.C. Luthra, Advocate)

Versus

1. Govt. of NCT of Delhi through:

The Chief Secretary
I.P. Estate, New Delhi-110002
2. Director General (Prisons)
Near Lajwanti Garden Chowk
New Delhi-110064
3. Supdt. of Prisons (PHQ)
Prisons Head Quarters
New Delhi-110064 ... Respondents

(Through Shri Anmol Pandita for Shri Vijay Pandita, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant, while holding the post of Deputy Superintendent Grade-I, held charge of the post of Superintendent from 21.05.2003 to 22.07.2010. As a result of directions in earlier OA No.2447/2009 filed by the applicant, the

respondents paid him the emoluments attached to the post of Superintendent. At the time of filing of the OA, the prayers of the applicant are as follows:

- 8.1 To direct the respondents to pay the applicant salary of the Supdt. from 26.04.2010 to 22.07.2010 i.e. the period he actually worked.
- 8.2 To direct the respondents to pay the applicant special pay attached to the post of Supdt. Jail No.1 on which he actually worked from 16.05.2006 to 26.05.2010.
- 8.3 To direct the respondents to pay to the applicant 20% allowances for holding two posts simultaneously i.e. from 01.04.2006 to 16.05.2006 i.e. SCJ-7 alongwith SCJ 809 and holding additional charge of SCJ 8 & 9 from 16.05.06 to 18.07.06 along with that of Supdt. CJ1.
- 8.4 To award penal interest.
- 8.5 To award exemplary costs.

2. During the course of arguments, however, the applicant clarified that at this point he presses only prayers 8.2 and 8.3.

3. Regarding Special Pay, the applicant's claim is that the post of Superintendent Jail No.1 carried a special pay, which also he should be paid for the period he actually worked on that post i.e. 16.05.2006 to 26.05.2010. Both sides agree that there is a special pay attached to the post of Superintendent Jail No.1.

4. The applicant's argument is that Special Pay is inseparable from pay as per F.R. 9 (21), which reads as follows:

"F.R.9 (21) (a) Pay means the amount drawn monthly by a Government servant as –

- * (i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and
- (ii) overseas pay, special pay and personal pay; and
- (iii) any other emoluments which may be specially classed as pay by the President."

5. From the above, it would appear that pay includes Special Pay and since the respondents do not deny that there is a special pay attached to the post of Superintendent Jail No.1, they cannot deny him Special Pay in view of the order of the Tribunal in OA No.2447/2009.

6. The second issue is regarding payment of 20% allowances for holding two posts simultaneously as stated in prayer 8.3 above. The applicant has cited the judgment of the Hon'ble Supreme Court in **Rai Sudhir Prasad Vs. State of Bihar and others**, (2004) 13 SCC 25, where it has been held that since the appellant was holding two independent substantive posts of Principal & Superintendent of Medical College on temporary basis, he is entitled to additional pay at the rate of 20% of the pay officiating post.

7. The contention of the learned counsel for the respondents is that according to F.R. 49 (v), when a Government servant is directed to look after charge of routine duties of another post, no additional pay is admissible. F.R. 49 (v) is quoted below for

ready reference:

"49. (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."

8. We have heard learned counsel for the parties and gone through the pleadings available on record.

9. As regards Special Pay, as discussed above, in case Special Pay is attached to the post of Superintendent Jail No.1, then the applicant is also to be paid Special Pay for the period 16.05.2006 to 26.05.2010 for which he is stated to have functioned on the post of Superintendent Jail No.1.

10. As regards 20% allowance for holding two posts simultaneously, the claim of the applicant is misplaced for the reason that for the period 21.05.2003 to 22.07.2010, he has been given salary of the post of Superintendent, which is in the pay scale of the higher post. Within that period, if he has been asked to look after work of some other post on routine basis, additional claim of 20% allowance is not admissible because he has already drawn allowances attached to the higher post of Superintendent Jail No.1, for which he has been paid Special Pay as well. Therefore, in the peculiar facts of the case, the applicant would not be entitled to 20% allowances. In the Rai Sudhir Prasad (supra) case the facts are different. In that case the petitioner was holding the charge of Principal & Medical Superintendent and hence was only granted 20% allowance as

additional pay. In this case, the applicant is allowed salary and special pay attached to the higher post. Thus, the facts involved in Rai Sudhir Prasad (supra) being different from the instant case, the said judgment will not apply.

11. In view of above discussion, we dispose of this OA with a direction to the respondents to pay arrears of Special Pay attached to the post of Superintendent for the period the applicant had been asked to work as Superintendent, within a period of three months from the receipt of a copy of this order. Prayer of the applicant for 20% allowances is, however, rejected for the reasons recorded above. In the nature of the order passed by us, we do not find it to be a fit case for payment of penal interest. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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