

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3369/2013

New Delhi this the 8th day of September, 2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Mr. P.K. Basu, Member (A)

Shri Nain Singh
S/o Late Shri Buraj Singh
Aged about 64 years
R/o F-138, Sector 56,
Noida

... Applicant

(Through Shri T.D. Yadav, Advocate)

Versus

Union of India through:

1. The Secretary
Govt. of India,
Ministry of Environment & Forests
CGO Complex, Lodhi Road,
New Delhi
2. The Chairman
Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar,
Delhi-110032
3. The Member Secretary
Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar,
Delhi-110032

... Respondents

(Through Shri P.N. Puri and Shri S.M. Arif, Advocates)

ORDER

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

The case of the applicant is that while he was holding the post of Accounts Officer in Central Pollution Control Board (CPCB), New Delhi, he was given the additional charge of Finance & Accounts Officer (FAO) with effect from 22.12.2004 to 21.09.2005 (9 months) and again for the period 1.12.2006 to 30.09.2009 (34 months). Therefore, his prayer is that since he was ordered to perform the duties which are attached to the post of FAO, based on the judgment of the Hon'ble Supreme Court in **Selva Raj Vs. Lt. Governor of Island, Port Blair and others**, AIR 1999 SC 838, he is entitled to the salary attached to the higher post without treating it as promotion. The applicant also relied on **Dwarika Prasad Tiwari Vs. M.P. State Road Transport Corporation and another**, 2002 SCC (L&S) 9, in which the Hon'ble Supreme Court held that for the period the appellants therein had discharged duties attached to the higher post, they should be paid emoluments attached to that higher post. The learned counsel for the applicant also placed before us a copy of the order of this Tribunal in OA 3614/2010, **Shri R.P. Chauhan and others Vs. Govt. of NCT of Delhi and another** decided on 27.09.2011. In this OA, the applicants had claimed that they are entitled for payment of salary in the pay scale of Principal on the principle of quantum meruit for the period they performed all the duties attached to the post of Principal, despite their posting as Vice Principal and the OA was allowed.

2. To establish the fact that the applicant was made incharge of Accounts Division and to act as FAO, the learned counsel for the applicant drew our attention to Office Order dated 22.12.2004, which states as follows:

"Henceforth, Accounts Division will be headed by Shri Nain Singh, Accounts Officer."

3. The learned counsel for the applicant also drew our attention to office order dated 10.07.2006, which reads as follows:

"Sh. M. Arumugam, FAO will be on leave w.e.f. 10.07.2006 to 13.07.2006. Shri Nain Singh, Accounts Officer will look after the work of Finance & Accounts Officer in addition to his own duties during above leave period."

4. Similarly, office order dated 30.11.2006 states as follows:

"The duties and responsibilities of the Accounts Section will be looked after by Shri Nain Singh, Accounts Officer, for the time being, until further orders."

5. The learned counsel for the applicant also drew our attention to office order dated 29.09.2009 to establish the fact that the applicant was holding charge of FAO. The order reads as follows:

"On attaining the age of superannuation by Shri Nain Singh, Accounts Officer on 30.09.2009 (AN), Shri Mahender Singh Bansal, AACO is hereby directed to take charge from Shri Nain Singh, ACO & Incharge, F&A with immediate effect and till further orders."

6. The respondents have stated that in the office order dated 22.12.2004, it is not mentioned that the applicant is incharge of FAO. Similarly, the other orders cited by the applicant dated 10.07.2006 and 30.11.2006 only refer to the fact that the applicant will "look after the work of Finance & Accounts Officer". Therefore, he was not discharging the duties of FAO.

7. The learned counsel for the respondents further pointed out that in Selva Raj (supra), in para 3, the Hon'ble Supreme Court has clearly noted that the salary of the appellant therein was to be drawn, whether he worked on the higher post temporarily or in an officiating capacity, against the post of Secretary (Scouts) and it was on this basis that the higher salary was allowed. In the present case, the applicant continued to draw his pay in the post of Accounts Officer and not FAO. The learned counsel also distinguished the judgment in Dwarika Prasad Tiwari (supra) stating that this was a matter relating to Madhya Pradesh Industrial Employment (Standing Orders) Rules 1963 and, therefore, is not applicable in the present case at all.

8. The respondents also stated that as per FR 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.

9. Lastly, the learned counsel for the respondents drew our attention to the office order dated 29.09.2009 and stated that through that office order, one Shri Mahender Singh Bansal,

AACO was directed to take charge from the applicant. In case the logic of the applicant is accepted, then Shri Bansal who is even below the level of the applicant, will also claim salary of FAO, which would not be correct.

10. We have heard learned counsel for the parties, gone through pleadings available on record and perused the judgments cited.

11. From perusal of the judgment in Selva Raj (supra), it is clear that what the Hon'ble Supreme Court 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 (supra), 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."

12. 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.

13. In the facts of this case also, we find that by the office orders cited by the applicant, he was asked to head and look after the charge of the post of FAO and, therefore, we cannot

accept the proposition of the respondents that he was not in full additional charge of the post of FAO. Needless to say that in view of the judgment of the Hon'ble Supreme Court cited above, FR 49 cited by the learned counsel for the respondents would not apply and the ratio laid down by the Hon'ble Supreme Court shall hold the field.

14. In view of above discussion, we allow this OA directing the respondents to pay the difference of emoluments for the higher post of FAO for the period 22.12.2004 to 21.09.2005 and for the period 30.11.2006 to 30.09.2009 to the applicant. In case this also requires revision of retirement benefits, the respondents shall revise all such retirement benefits and make necessary payment of arrears. This exercise should be completed within three months from the receipt of a copy of this order. No costs.

(P.K. Basu)
Member (A)

(Syed Rafat Alam)
Chairman

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