

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATIONS NO.170/00402/2018

DATED THIS THE 08th DAY OF APRIL, 2019

HON'BLE JUSTICE L.NARASIMHA REDDY, CHAIRMAN

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Shri.B.N.Vidya Shankara, aged 62 years
Assistant Commissioner (Retd.)
38, 1st Main, 4th Cross,
Mahadeshwar Nagar,
Bangalore – 560 091.Applicant

(By Advocate Shri Veerendra Sharma)

Vs.

The Commissioner,
Kendriya Vidyalaya Sangathan,
18, Institutional Area,
Shahid Jeet Singh Marg,
New Delhi – 560 016.Respondent

(By Advocate Shri Vishnu Bhat)

O R D E R (ORAL)

JUSTICE L.NARASIMHA REDDY, CHAIRMAN)

The applicant was holding the post of Superintendent of Accounts in Kendriya Vidyalaya Sangathan(KVS). It is stated that for the period between 1.12.1987 to 28.2.1988, he was asked to discharge some functions attached to the post of Accounts cum Inspecting Officer(AIO) and for the said period, he was paid salary attached to that post of AIO. The applicant contends that for a second spell between 15.10.1990 to 3.9.1993, he discharged the same functions but he was not paid the salary attached to the post of AIO. Placing reliance upon FR 49, the applicant contends that he is entitled to be paid the salary/pay scale attached to the post of AIO. According to him, the respondents did not have any justification in denying the benefit under FR 49 for the second spell particularly when they have extended the benefit for

the first spell in the year 1987 to 1988 on being satisfied about his entitlement. It is also stated that persons similarly situated like him have been extended the benefit/higher scale of pay.

2. Another facet of the grievance of the applicant is that his junior in the post of Superintendent was extended the benefit of higher scale of pay whereas he was denied of the same, contrary to the FR 22. He prayed for a direction in this regard also.

3. The respondents filed counter affidavit opposing the OA. It is stated that though the applicant was required to discharge some functions of the post of AIO, no order of appointment in that behalf was issued. According to them, the claim of the applicant was considered with reference to the relevant records and on finding that there was no supporting document, they have denied the benefit to him. As regards the applicability of FR 22, it is stated that the applicant did not make any claim before them in this behalf.

4. We heard Shri Veerendra Sharma, Learned Counsel for the applicant and Shri Vishnu Bhat, Learned Counsel for the respondents at length.

5. The substantive post held by the applicant is, Superintendent in KVS. It is not uncommon that whenever any superior post falls vacant either on account of retirement or transfer of the incumbent, temporary arrangements are made. They may include the temporary appointment of any official from the feeder category or placing of such an employee in 'look after charge' or just requiring him to discharge some of the functions attached to the higher post to ensure that the day to day functions of the organisation are not hindered.

6. FR 49 provides for the payment of salary attached to a higher post in case an employee in the feeder category is appointed on temporary basis. The provision reads as under:

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 that 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;

(ii) where a Government servant is formally appointed to hold dual charges of two posts in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge:

Provided that, if the Government servant is appointed to an additional post which carries a special pay, he shall be allowed such special pay;

(iii) where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post or of the highest post if he holds charge of more than two posts in addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding [45] days but not exceeding 3 months:

Provided that if in any particular case, it is considered necessary that the Government servant should hold charge of another post or posts for a period exceeding 3 months, the concurrence of the [Department of Personnel and Training] shall be obtained for the payment of the additional pay beyond the period of 3 months;

(iv) where an officer is formally appointed to hold full additional charge of another post, the aggregate of pay and additional pay shall in no case exceed [Rs.80,000];

(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;

(vi) if compensatory or sumptuary allowances are attached to one or more of the posts, the Government servant shall draw such compensatory or sumptuary allowances as the Central Government may fix:

Provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts.

7. From the perusal of the first paragraph of the rule, it becomes clear that an appointment, though of temporary or officiating nature is essential to enable an employee to draw the scale of pay attached to a higher post. Having provided the benefit in such positive terms, the rule making authority stipulated some prohibition also. Clause-V is to the effect that if the arrangement is only in the form of current charge of the routine duties of a superior post, no additional pay shall be admissible to the Government servant.

8. In the instant case, applicant is not able to place before us, any order of officiating or temporary appointment or arrangement for the post of AIO. It was not even an arrangement of holding of current charge. To be precise, the arrangement is reflected in the order dtd. 28.6.1990 and it reads as under:

"Sh.J.N.Malhotra, Accounts-Cum-Inspecting Officer is on long leave from 30.3.1990 to till date as such, Sh.B.N.Vidyashankara, Superintendent of Accounts is hereby directed to sign all the TA/DA, Medical, L.T.C bills etc. of the Principal, Vice-principal and Incharge Principals of Vidyalayas, to approve the pay fixation statement of the staff of the Kendriya Vidyalayas and to dispose of the Internal/External Audit reports till the incumbent rejoins duty."

9. Nowhere it is mentioned that the applicant is required to discharge the functions attached to the post of AIO. It is a different matter that some functions which were attached to the post of AIO were required to be attended to, by the applicant lest there exists any hiatus in the department.

10. When it is not even a case of the current lookafter of charge, the question of extending of the benefit of higher scale of pay does not arise. We however make it clear that this order shall not be construed as finding fault with the extension of the benefit to the applicant for the period between 01.12.1987 to 28.2.1988.

11. As regards the claim under FR 22, we find that the applicant did not approach the respondents with any representation. He has to approach the respondents in this regard, if

he is so advised.

12. We therefore, dismiss the OA in so far as it relates to the claim based on FR 49, and leave it open to the applicant with reference to his claim referable under FR 22. There shall be no order as to costs.

**(C.V.SANKAR)
MEMBER (A)**

**(JUSTICE L.NARASIMHA REDDY)
CHAIRMAN**

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