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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1800/2003

New Delhi, this the 31st day of March, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.K.NAIK, MEMBER (A)

R.K.Bansal
s/o Late Shri Misri Lal
R/o House No.15,
Vivekanandpuri
Delhi - 110 007. ... Applicant

(By Advocate: Sh. Harvir Singh)

Versus

Union of India, through
Secretary
Ministry of Food Processing Industries
Panchsheel Bhavan
New Delhi. ... Respondent

(By Advocate: Sh. K.C.D.Gangwani)

O R D E R

Justice V.S. Aggarwal:-

Applicant (R.K.Bansal) by virtue of the present application seeks declaration that he is entitled to the same pay scale as applicable to the post of Director (F&VP) and further to direct the respondents to release the payment of arrears to him for holding the post of Director (F&VP) on current duty charge basis w.e.f. 25.1.1991 with interest.

2. Some of the relevant facts are that the applicant was appointed as Joint Director (Consultancy) in 1980. The designation has been recharged to Joint Director (F&VP). The post of Director (F&VP) fell vacant in December, 1990. The applicant was given current duty charge of the post of Director (F&VP) [for short 'Director'] because respondent was considering to amend the recruitment

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rules for the post of Director so as to include the post of Joint Director (Consultancy) in the feeder cadre. While current duty charge was given, the applicant was appointed as Licensing Officer, under the Fruit Products Order, 1955.

3. At this stage, it would be relevant to mention that applicant had earlier filed an application in this Tribunal which was finally disposed of by the Supreme Court. He had filed OA 13/1986 for direction to amend the recruitment rules for the post of Director which was dismissed. He had preferred an appeal in the Supreme Court and Supreme Court had issued certain directions. Subsequently, the applicant filed another OA 2181/99 which was disposed of by this Tribunal on 25.1.2000 and the order dated 4.10.1999 was quashed. Thereafter, the applicant has continued in the said post of Director on current duty charge basis w.e.f. 25.1.1991.

4. The applicant contends that he has been continuously doing the work of Director on current duty charge basis, therefore, he is entitled to the pay scale of the post of Director referred to above.

5. The application has been contested. The respondents contend that applicant was asked to hold only the current charge for the post of Director in 1991. In terms of the instructions of the Government of India under Fundamental Rule 49, no additional pay is admissible to a Government Servant who is appointed

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to hold current duty charge of routine duties of another post irrespective of the duration of the additional charge.

6. It has further been pleaded that at the time of the inspection of the Ministry (Ministry of Food Processing Industries) in 1988, the post of Director was transferred along with its recruitment rules. It was considered necessary to amend the existing recruitment rules in accordance with the changed scenario. Since it was a time consuming process, and post of the Director could not be filled on a regular basis, the applicant was asked to hold the current charge of the duties. It is denied that the applicant is entitled to the reliefs claimed.

7. During the course of the submissions, learned counsel for the respondents took up a preliminary objection that the application is barred by time because the applicant was claiming pay scale of the post of Director from the year 1991.

8. We, at the outset, refer with advantage to the decision in the case of M.R.Gupta v. Union of India & Others, 1995(5) SCC 628. The Supreme Court in emphatical terms held that in cases of pay and fixation of scales, it is a continuous cause but the relief can be couched in terms of the period of limitation. Necessarily, therefore, if the applicant is entitled to the pay scale of the post of Director, one could limit the relief to the period of limitation that has been prescribed.

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9. The main controversy herein was as to if the applicant, who is holding the current charge of the duties of the post of Director, is entitled to the pay scale with post or not?

10. The order of 25.1.1991 reads:

"No. 9-13/90-PD-II. The President is pleased to appoint Shri R.K.Bansal, Joint Director (Consultancy) in the Ministry of Food Processing Industries to hold the current charge of the duties of the post of Director (F&VP) in addition to his own duties as Joint Director (Consultancy) in the Ministry of Food Processing Industries until further orders.

The President is also pleased to appoint Shri R.K.Bansal, as the Licensing Officer under the Fruit Products Order 1955 until further orders.

Sd/-
(M.K.J.NAIR)

Under Secretary to the Government of India"

11. In addition to the current duty charge, the applicant was also appointed as Licensing Officer under the Fruit Products Order, 1955. Under the Fruit Products Order, 1955, the Licensing Officer means the Director (Fruit & Vegetable Preservation), Food and Nutrition Board, Department of Food, Ministry of Agriculture, Government of India and includes any other officer empowered with the approval of the Central Government.

12. Learned counsel for the applicant relied upon the decision of the Supreme Court in the case of Selva Raj v. Lt. Governor of Island, Port Blair and Others, 1998(3) SLR 770. Before the Supreme Court,

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the appellant was called upon to look into the duties of the Secretary (Scouts). The order passed therein was in the following words:

"The Director of Education, A.&N. Islands is pleased to order the transfer to Shri Selveraj, Primary School Teacher attached to Middle School, Kanyakumari to Directorate of Education (Scouts Section) to look after the duties of Secretary (Scouts) with immediate effect. His pay will be drawn against the post of Secretary (Scouts) under GFR 77."

It was not disputed before the Apex Court that appellant looked after the duties of Secretary (Scouts) and he was not paid the salary for the work done by him. The Supreme Court held that he had worked on the higher post in an officiating and temporary capacity. This clearly shows that therein the position was totally different. The concerned person had worked in an officiating capacity rather than the current duty charge. Therefore, Fundamental Rule 49 was not a subject matter of consideration. Otherwise also the order passed in the case of Selva Raj (supra) clearly shows that it was mentioned that his pay would be drawn against the post of Secretary (Scouts). Though the Supreme Court granted the relief but it is apparent that facts were totally different from the present case.

13. Another decision relied upon by the applicant was in the case of Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma & Others, (1998) 5 SCC 87. Therein also the promotion had been made on an officiating and on stop-gap arrangement. The Supreme Court held that Government in its capacity, as a model employer, cannot be permitted to

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raise such plea. Once the person was promoted on an officiating basis, he/she was entitled to the pay scale of the promoted post.

14. In the present case also, the said decision has no application because the applicant had not been promoted. He had only been given the current duty charge. If the applicant had been promoted, the things would be totally different. But unfortunately no such order of promotion had been passed.

15. The learned counsel for the applicant had highlighted the fact that applicant had continued to work on the said post for so many years, therefore, necessary benefits should accrue. In normal circumstances, the argument would prevail but in the preceding paragraphs, we have given the backdrop of the facts that there has been a litigation that the recruitment rules have not been finalised. The delay occurred because different petitions and litigations were pending. Therefore, in the peculiar facts, we have a little option but to reject the said plea.

16. FR 49 deals with the situation pertaining to the combination of the appointments. Clause (v) of the Fundamental Rule-49 reads:

"(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;"

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It is on this provision that the respondents relied so as to contend that no additional pay is admissible to the applicant.

17. It is well known that instructions can be issued which are supplementary to the rules. Vide Government of India, Department of Personnel & Training OM dated 11.8.1989, the following instructions have been issued:

"2. With a view to avoiding recurrence of such situations, the following guidelines may be followed while considering the question of entrusting additional charge of another post to an officer:-

(i) When an officer is required to discharge all the duties of the other post including the statutory functions, e.g., exercise of power derived from Acts of Parliament such as Income Tax Act or the Rules, Regulations, By-Laws made under various Articles of Constitution such as FIRs, CCS (CCA) Rules, CSRs., DFPRs., etc., then steps should be taken to process the case for getting the approval of the Competent Authority and formal orders appointing the officer to the additional post should be issued. On appointment, the officer should be allowed the additional remuneration as indicated in FR 49.

(ii) Where an officer is required only to attend to the usual routine day-to-day work of non-statutory nature attached to the post, an office order may be issued clearly stating that the officer will be performing only the routine day-to-day duties of non-statutory nature and that he would not be entitled to any additional remuneration. The office order should also specify what duties he would be discharging or what duties he would not be discharging."

18. At the outset, in all fairness, we must consider that in the order that was issued giving current duty charge to the applicant, the words 'routine duties' are missing. But the matter of the



(S.K.Naik)

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fact is, that it was a current charge given to the applicant. Merely because it has not been mentioned that he has to do routine duties, will not take the colour and strength of the order that it was a current duty charge.

19. In the order that has been passed, there was no mention that the applicant is entitled to any extra emoluments. The instructions that are being relied upon by the applicant which we have reproduced above, does indicate that formal orders of appointing the officer to the additional post should be issued, but additional remuneration as is apparent would only be available "on appointing of the officer"

20. In the present case, no formal order of the applicant to the post of Director has been issued. Unfortunately, for reasons which we have recorded above, he has continued on current duty charge for many years. But once it is so, the applicant cannot be held entitled to any monetary benefits.

21. Resultantly, Original Application being without merit must fail and is dismissed.

S.K.Naik
(S.K. Naik)
Member (A)

V.S. Aggarwal
(V.S. Aggarwal)
Chairman

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