

CENTRAL ADMINISTRATIVE TRIBUNAL

KOLKATA BENCH

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Original Application No. 350/00846/2018.

Date of order: This the 26th day of September, 2019.

THE HON'BLE SMT. BIDISHA BANERJEE, JUDICIAL MEMBER
THE HON'BLE DR.(MS) NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER

Apurba Kumar Pramanik,
 Son of Late Kishori Mohan Pramanik,
 Aged about 65 years, retired Addl.
 Commissioner of Income Tax from Range II,
 Kolkata, residing at 36/1, Tollygunge
 Circular Road, Kolkata-700 053.

...Applicant

By Advocate: Mr. S.K. Dutta

-Versus-

1. Union of India
 Through the Secretary to the
 Govt. of India, Ministry of Finance,
 Department of Revenue,
 North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes,
 Central Secretariat, North Block,
 New Delhi – 110001.
3. The Director of Income Tax (HRD),
 2nd Floor, ICADR Building, Plot No. 6,
 Vasant Kunj, Institutional Area,
 Phase II, New Delhi -110070.
4. The Principal Chief Commissioner of
 Income Tax (West Bengal & Sikkim),
 Aayakar Bhawan (1st Floor), P-7,
 Chowringhee Square, Kolkata – 700 069.
5. The Principal Chief Commissioner of
 Income Tax-4, Aayakar Bhawan (7th Floor), P-7,
 Chowringhee Square, Kolkata – 700 069.
6. The Chief Commissioner of
 Income Tax, Kolkata-IV,
 Aayakar Bhawan (1st Floor), P-7,
 Chowringhee Square, Kolkata – 700 069.

...Respondents

By Advocate: Mr. K. Prasad

ORDER (ORAL)

BIDISHA BANERJEE, MEMBER (J):

In this O.A the applicant has sought for the following reliefs :-

- 8.(a) An order quashing and/or setting aside the impugned order dated 15.5.2018.
- (b) An order holding that the denial and/or rejection of claim of the applicant for additional remuneration is totally arbitrary, illegal, discriminatory and the same cannot be sustained.
- (c) An order directing the respondents to grant additional remuneration in terms of the FR 49 (iii) to the applicant for the additional charges held by him with interest and within a period as to this Hon'ble Tribunal may deem fit and proper.
- (d) An order directing the respondents to produce/cause production of all relevant records.
- (e) Any other order or further order/orders as to this Hon'ble Tribunal may deem fit and proper."

2. The order impugned in this O.A is extracted verbatim herein below for clarity :

"ORDER

Order No.	: 01/2018
Name :	Apurba Kumar Pramanik
Designation :	Addl. CIT (Retd.)
Order under :	F.R -49(iii)
Date of Order	: 15.05.2018

In pursuance to the order of Hon'ble CAT, Kolkata Bench in O.A. No.350/1117/2017 dated 27.02.2018 and also in view of the subsequent direction received from CBDT vide its letter dated 10/04/2018 in C-18011(S)/166/2017-V&L-the comprehensive representation submitted by Shri Apurba Kumar Pramanik, Addl.CIT (Retd.) in terms of direction of the Hon'ble CAT, Kolkata Bench in OA No. 350/1117/2017 dated 27.02.2018 is hereby taken for disposal strictly as per provision of FR 48(ii)/(iii) & keeping in view of comments of the Addl.CIT-VI, CBDT made in connection with the disposal of the case.

In the facts and circumstances of the instant case, it is evident from the posting profile of Shri Pramanik as provided by the Pr. CCIT, West Bengal & Sikkim that he had been holding charges of JCIT & Addl. CIT during various periods.

In this context, Fundamental Rule 49-(iii) provides as under :

"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 percent 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.

Providing 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 & Training] shall be obtained for the payment of the additional pay beyond the period of 3 months."

Now as per provision of FR 49(iii), in the instant case, the officer should be appointed formally to hold charge of another post 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 in addition to presumptive pay. Since Shri Pramánik had held the posts as his additional charge in the same cadre and such appointment is also not approved by the Appointment Authority, he is not eligible for granting presumptive pay as per provision of FR 49(iii).

Therefore, in view of the facts and circumstances of the case narrated above, the comprehensive representation as submitted by Shri Apurba Kumar Pramanik, Addl. CIT (Retd.) in terms of direction of the Hon'ble CAT, Kolkata Bench such in OA No.350/1117/2017 dated 27/02/2018 is hereby disposed of by rejecting his petition to grant presumptive pay as per provision of FR 45(iii) in his case."

3. The applicant to fortify his claim for additional pay for holding Additional Charge of the post of JCIT has relied upon the decision in O.A.No. 784/2010, to which he was party, again extracted below for clarity :

The five applicants of these OAs are working as Additional Commissioners under the respondents and are aggrieved by the action of the respondents in not considering their claim for additional remuneration/allowance under FR 49(iii)/ rejection of the claim of applicant No.1 in this regard. The same reads as under :

"The application for additional remuneration under FR 49(iii) has been examined by the CCIT and on the basis of the same, the prayer/claim for the additional allowance/ remuneration has not been found to be acceptable. The applicant's prayer is rejected. Inform him accordingly."

- 2. They seek quashing of this order and grant of benefits.
- a) The case of these applicants in brief is that they are holding independent charges of other offices/Ranges in addition to their substantive posting. (These details are on record.) They have brought on record (a) Relevant extract of Manual of Office Procedure (Publisher, Directorate of Inspection, 2003). Attention is drawn to para 18 regarding the functions of Additional/Joint Commissioner of Income Tax (Range). Para 18.1 provides that they may be required to formulate assessments in revenue yielding and complex cases. Para 18.2 provides that they exercise amongst others statutory functions and judicial functions (b) orders regarding jurisdictions (c) Manual of Office Procedure (Technical). It is stated that they submitted representations for grant of additional

remuneration as per FR 49(iii) read with DOPT OM dt. 11.8.89. The case of applicant No.1 has been rejected in a cryptic manner, while the decision in respect of four others is yet to be communicated.

b) Rejoinder is filed. It is submitted with reference to para 8 of the reply that the word 'or' in FR 49(iii) is disjunctive and that they have held separate and distinct jurisdictions. With reference to para 9 of the reply it is submitted that applicants cannot be made to suffer on account of laches on the part of the respondents. In subsequent orders the duties were specifically mentioned. A copy of the order dt. 13/25.11.09 assigning certain cases to J.C.L.T. of Range 20, 23 & 24 have been brought on record.

(The CIT, Kol VIII), has issued this order in view of the powers conferred upon him by CBDT in exercise of 120(4)(b) of I.T. Act.) The statements made in para 13 are denied and respondents put to proof.

3. It is accepted in para 5(a) of reply that in view of shortage of officers they had been assigned additional charges of different ranges. It is stated in para 8 of reply that the applicants are holding additional charge of other posts which are in the same cadre/line of promotion. It is submitted in para 9 that GOI instruction 2 & 3 quoted below FR 49 provide that duties and functions of the post have to be defined in the order. These were not indicated in the orders in respect of these applicants. It is submitted in para 13 that as senior officers they can neither expect any extra remuneration nor any extra recognition for their statutory work, which is not optional. Their claim for additional remuneration amounts to intellectual dishonesty. It was ensured that additional charges were in the same building.

4. We have heard the learned counsel.

5. Fundamental Rule 49 contains provisions regarding combination of appointments.

Sub Rule (i) contains provisions when one holds charge of higher post in same office and in the same cadre/line of promotion in addition to ordinary duties. Sub Clause (ii) considers the situation when dual charges of two posts in the same cadre in same office are held. No admissible pay is payable, but if one of them carries special pay the same will be paid. Sub Rule (iii) applies to a situation which are not in the same office or if not

in the same office is or are not in the same line of promotion, he shall be allowed pay of higher/highest post plus 10% of presumptive pay of additional posts, if additional charge is beyond 45 days. Concurrence of DOPT has to be obtained for payment beyond 3 months. Sub Rule (iv) considers the situation when an officer is appointed to hold full additional charge of another post. The aggregate of pay and additional pay is not to exceed Rs.26,000/- (from 12.3.99). No additional pay is payable for holding current charge of routine duties.

6(a) MHA OM 7/14/Estt (A) dt. 24.1.63 quoted below Serial 3 under FR 49 is as under:

"The Law Ministry has advised that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post but he cannot exercise administrative or financial powers vested in the full-fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived directly from an Act of Parliament, e.g., Income Tax Act or Rules, Regulations and By-Laws made under various Articles of the Constitution, e.g., Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules, etc."

b) Relevant part of DOPT OM dt 11.8.89 is as under:

"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 Act of Parliament such as Income Tax Act or the Rules, Regulations, By-Laws made under various Articles of Constitution such as FRs, 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 officer order should also specify what duties he would be discharging or what duties he would not be discharging."

7. The applicants have also brought on record the Manual of Office Procedure (Technical) regarding duties and responsibilities of Additional/Joint CIP in charge of a Range. They have also brought on record the order constituting the ranges and the orders placing them in additional charges.

8. The crucial question is as to whether these applicants had been given only current charge of additional posts or they have been entrusted with statutory functions. If they have been entrusted with statutory functions then the same is inconsistent with the argument of their holding current charge. The respondents have accepted that these applicants have been charges of Ranges. Range is admittedly a unit of tax administration.

9. If one is holding charge of another statutory post, the question of their being located in another building does not arise. It is true that the Rules require that concurrence of DOPT has to be obtained if period exceeds three months in cases governed by sub rule (iii). Such a situation might have come about on account of mismatch between availability of officers and posts. The respondents have not said anything about it. Obtaining prior approval is the responsibility of administration.

10. When we apply the law laid down in FR 49 and the GOI instructions to the facts of this case it is evident that orders of respondents cannot be sustained. We are fortified in this view by the decision of Madras Bench in OA 718/06 (B.V.Bhaskar, Additional Commissioner of Income Tax -vs- UOI).

11. The impugned orders are quashed and set aside. The respondents are directed to reconsider the case of applicants in the light of law as explained above. This exercise be completed within three months of receipt of order and the arrears, paid within one month thereafter failing which interest at 8% will be payable beyond that period to the date of actual payment. No order as to costs.

A mere running over eye on the decision extracted supra would demonstrate and exemplify that a 'Range' has been referred to unit of administration and applicant along with others, who were posted in a Range, were allowed to be reconsidered on the basis of FR 49 and Govt. of India's instructions and DOP&T O.M dated 11.08.1989 is in their favour.

4. Vide Order dated 08.05.2014 (Annexure-12) the details of posting of the applicant have been furnished. The order runs thus :

"OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX, KOL.IV, KOLKATA
P-7, Chowringhee Square, Kolkata-700069.

No.CCIT.Kol/Addl. Pay/2014-15/397

Dated 08.05.2014

In compliance with the CAT's Order No.OA 784 of 2010 dated 23.12.2011 and CCIT (CCA), Kol-I vide Order and Circular No. 5E/90/2005-06/Corrs Pt.IV/2203 dated 30.09.2013, administrative approval is hereby accorded only in favour of Sri Apurba Kumar Pramanik, Ex-Addl. Commissioner of Income Tax, Range-11, Kolkata, who held the additional charges of other post(s) for the period as detailed below :

DETAILS OF ADDITIONAL CHARGES HELD

Sl. No.	Substantial Charges	Addl.charges	Period	CCIT's Order No.	Remarks
1.	Range-44	Range-45	11.07.05 to 30.06.06	Order No.105 dt.23.06.05 F.No.2E/4/Addl-JCIT/05-06	One Addl.charge
2.	Range-13	Range 14 & 15	31.01.07 to 27.06.08	Order No.150 dt.24.01.07 F.No.2E/4/Addl-JCIT/06-07	Two Addl.Charges
3.	Range-13	Range-17	27.07.07 to 27.06.08	Order No.57 dt.24.07.07 F.No.2E/4/Addl-JCIT/06-07	One Addl. Charge
4.	Range-13	Exemption	01.11.07 to 27.06.08	Order No.120 dt.29.10.07 F.No.2E/4/Addl-JCIT/07-08	One Addl. Charge
5.	Range Exemption	Range 1 & 2 Siliguri	27.06.08 to 20.02.09	Order No.52 dt.19.06.08 F.No.2E/4/Addl-JCIT/08-09	Two Addl.Charges
6.	Range-Exemption	Range-16	04.03.09 to 25.08.09	Order No.217 dt.09.01.09 F.No.2E/4/Addl-JCIT/08-09	One Addl. Charge
7.	Range Exemption	Range-17	04.03.09 to 29.07.09	Order No.217 dt.09.01.09 F.No.2E/4/Addl-JCIT/08-09	One Addl. Charge
8.	Range Exemption	Range-18	04.03.09 to 03.08.09	Order No.217 dt.09.01.09 F.No.2E/4/Addl-JCIT/09-08-09	One Addl. Charge
9.	Range Exemption	Range-13 & 14	29.07.09 to 20.07.10	Order No.65 dt.20.07.09 F.No.2E/4/Addl-JCIT/08-09JCIT/09-10	Two Addl. Charges
10	Range-Exemption	Range-15	29.07.09 to	Order No.65 dt.20.07.09	One Addl. Charge

			28.06.10	F.No.2E/4/Addl-JCIT/09-10	
11.	Range Exemption	Range-29 & 30	21.08.09 to 30.11.09	Order No.84 dt.17.08.09 F.No.2E/4/Addl-JCIT/09-10	Two Addl. Charges
12.	Range Exemption	Range-57, 58 & 59	30.11.09 to 04.06.10	Order No.133 dt.24.11.09 F.No.2E/4/Addl-JCIT/09-10	Three Addl. Charges
13.	Range-11	Range -54	18.06.10 to 01.04.11	Order No.43 of 2010 dt.02.06.10 F.No.2E/4/Addl-JCIT/09-10	One Addl. Charge
14.	Range-11	Range-45	15.09.10 to 31.03.11	Order No.102 of 2010 dt.31.08.10 F.No.2E/4/Addl-JCIT/10-11	One Addl Charge
15.	Range-11	Sr.DR.ITAT	01.06.11 to 11.09.12	Order No.212 of 2011 dt.09.02.2011 F.No.2E/4/Addl-JCIT/10-11	One Addl. Charge

This approval is accorded in terms of F.R. 49(iii) as instructed by the CAT."

The applicant was admittedly posted in a Range on such occasions.

5. It is evident that the CBDT on 8.5.2013 had advised the CCLT (CCA) to examine in the case of Rajarshi Dasgupta where the DOPT had vide their note dated 07.06.2012 advised as under :

"It is of the opinion that each office of a Commissioner called a circle is a separate entity and are to be treated as separate offices. As such in the instant case, Shri Rajarshi Dasgupta is entitled to additional remuneration for holding additional charge of other post(s) under FR 49(iii)."

6. The Rule 49 (iii) the benefit whereof has been sought for 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 the Government. In such cases, his pay is regulated as follows :

(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."

7. In our considered opinion if Rajarshi Dasgupta could be conferred with the benefit of F.R.49(iii) supra, there is no justification in withholding/disallowing such benefit to the present applicant.

Hence O.A is allowed.

8. Let appropriate orders be issued by the respondents within 3 months from the date of receipt of a copy of this order. There shall be no order as to costs.

(DR (MS) NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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