(2013) 3 CHN 445

Calcutta High Court

Case No: W.P.C.T. No. 380 of 2012

Union of India		APPELLANT
	Vs	
Udayan Samaddar		RESPONDENT

Date of Decision: April 19, 2013

Citation: (2013) 3 CHN 445

Hon'ble Judges: Nishita Mhatre, J; Anindita Roy Saraswati, J

Bench: Division Bench

Advocate: Bhaskar Prasad Banerjee and Somnath Bose, for the Appellant;B.R. Das, Srikanta Paul, S. Bandyopadhyay for the Respondent No. 1, for the Respondent

Judgement

Nishita Mhatre, J.

The petitioners are the Union of India and its officers in the Geological Survey of India. They have challenged the decision of the Central Administrative Tribunal, Calcutta Bench in O.A. No. 1176 of 2008. The Tribunal has upheld the contention of the Respondent No. 1 (hereinafter referred to as the respondent) that he is entitled to presumptive pay while he was discharging the function of Superintending Engineer (Construction) which was an ex-cadre post. The Tribunal has further directed that in case the arrears were not paid within the stipulated time. The petitioners would have to pay interest @ 8% per annum. The Director General, Geological Survey of India issued an order on 19th July 2002 directing the respondent who was then working as Director in the Geological Survey of India to look after the work of the Superintending Engineer (Construction) (herein after referred to S.E. (Construction) with effect from 19th July 2002. This office order was issued on the basis of the Ministries decision. A fresh order was issued on 3rd April 2003 directing the respondent to hold the additional charge of Director, Grievance besides his routine work.

2. On 1st June 2005, the respondent submitted a representation to the Director General Geological Survey of India for payment of presumptive pay for discharging additional duties as S.E. (Construction). As there was no response to the representation of the respondent, he called upon the Secretary, Ministry of Mines to issue the requisite orders

for payment of presumptive pay.

3. On 27th March 2008, the respondent requested the Director General, Geological Survey of India, once again, for payment of presumptive pay with effect from 19th July 2002 to November 2007, excluding the period between November 2002 and March 2003.

4. Several representations were submitted to the authorities by the respondent in the year 2008 ultimately on 17th July 2008 the Director (S.G. Parliament) requested the Secretary to the Government of India, Ministry of Mines to take an early decision with regard to the respondent''s request by a letter dated 1st December 2008. The respondent was informed the decision not to pay him presumptive pay by the Administrative Officer working in the office of the Petitioner No. 4 by a communication dated 23rd December 2008. The Director General, Geological Survey of India was informed by the Government of India that the respondent''s case was considered but the Ministry in consultation with the Department, Personnel and Training had rejected his request. This letter was disclosed to the respondent only after he had filed the O.A. No. 1176 of 2008 before the Central Administrative Tribunal.

5. In his application before the Tribunal the respondent had disclosed that in case of another government servant who was holding additional charge, the government had approved of payment of presumptive pay.

6. The petitioners filed their reply through the Petitioner No. 4. It was pleaded therein that the respondent was not given additional charge but was only directed "to look after the work of S.E. (Construction) as well as hold the additional charge of Director, Grievance". It was contended that the respondent was not qualified as a Civil Engineer and, therefore, he could not be assigned the additional charge of the post of S.E. (Construction). He was only directed to perform routine work which could be stalled if there was no incumbent in the post of S.E. (Construction). The petitioners contended that the order directing the respondent to look after the work of S.E. (Construction) did not assign him the additional charge of S.E. (Construction). The petitioners pleaded that it was only when an additional charge was given to an employee that he could claim presumptive pay. The petitioners contended that the routine work in the office of the S.E. (Construction) which the respondent was expected to handle was not an additional charge and, therefore, he was not entitled to presumptive pay.

7. In his rejoinder the respondent denied the assertions contained in the petitioners'' reply. He pleaded that since he was appointed with the approval of the Ministry to look after the work of Superintending Engineer, the requirement of being technically qualified as a Civil Engineer was not necessary.

8. The Tribunal, after considering the contentions raised before it, has held that the respondent was required to discharge caudal functions entrusted to the Central Public Works Department (CPWD) and not merely to discharge the routine day to day work of

the Office of the Superintending Engineer (Construction). The petitioners'' contention that the respondent''s case was covered by Fundamental Rule 49(v) was found to be untenable and instead the Tribunal held that he was entitled to presumptive pay under Fundamental Rule 49(iii) alongwith interest.

9. Mr. L.K. Chatterjee, the Learned Counsel appearing for the Union of India has submitted before us that the appointment order issued to the respondent directing him to work as a Superintending Engineer did not give him additional charge of that post. He submitted that the respondent was only required to look after the day to day functioning of the office of the Superintending Engineer, while he was working as Director, TCS. He further urged that no additional pay is admissible to a government servant who is appointed to hold the current charge of routine duties of another post. The respondent was not expected to perform the codal functions according to Mr. Chatterjee and, therefore, he was not entitled to presumptive pay. The Learned Counsel drew our attention to the fact that the respondent was not qualified to hold the post of a Superintending Engineer and, therefore, he was not entitled to any additional pay while he performed routine duties of the post. The Learned Counsel relied on the judgment of the Supreme Court in the case of Mohd. Swaleh Vs. Union of India (UOI) and Others,

10. Mr. B.R. Das, the Learned Counsel for the respondent on the other hand submitted that the Tribunal has not committed any error in granting presumptive pay to the respondent. He urged that there was no perversity in the decision of the Tribunal and, therefore, we should not interfere with the decision in our writ jurisdiction. He further submitted that the respondent had not only to oversee the day to day work of the office of the Superintending Engineer but, as pleaded in his application before the Tribunal, he was required to shoulder the responsibilities of a Superintending Engineer. These related to minor and major construction activities of the department, located all over India. For this the respondent had to maintain a liaison with the Central Public Works Department and other organizations, Municipalities, Development Authorities etc. The Learned Counsel also submitted that while working as a Superintending Engineer the respondent had also to oversee the work of three Ministerial staff, three Technical staff, one Stenographer and two Group--D staff. According to the Learned Counsel the nature of work performed by the Respondent was on the basis of an additional charge given to him.

11. The issue raised before us is whether the respondent was performing routine duties of the post of Superintending Engineer or was incharge of codal duties. If the respondent could be considered to have performed only routine duties then FR 49(v) would apply to his case and he would not be entitled to any additional pay. However if the duties performed by the respondent were substantive in nature and were codal duties he would be entitled to presumptive pay under FR 49(iii).

12. It would be appropriate at this stage to set out FR 49:

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:-

(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;

(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.

There is no dispute that the respondent''s substantive post as Director of TCS and the post of Superintending Engineer had identical scales of pay but were not in the same cadre/line of promotion.

13. The relevant part of the letter issued to the respondent in July 2002 reads as follows:

Consequent upon repatriation of Sri R. Sircar, S.E. (Construction) to his parent department on expiry of his deputation tenure in GSI, the Director General GSI has nominated Sri U. Samaddar, Director (TCS). CHQ to look after the work of S.E. (Construction), GSI w.e.f. 19.7.2002 till a regular incumbent in the post of S.E. (Construction) takes over charge on the basis of the Ministry''s decision in this regard on until further orders.

There is no dispute that the respondent worked in accordance with the aforesaid directions till he retired from service. Significantly, on 3rd April 2003 a letter was issued to the respondent directing him to hold additional charge of Director (Grievance), the relevant part of this letter reads as under:

Consequent upon joining Shri U. Samaddar, Director, GSI, TCS Division, CHQ, Kolkata will look after the work of SE (Construction). He will also hold the additional charge of Director (Grievance).

14. Thus the petitioners have drawn a distinction between the nature of the responsibility cast on the respondent while working as Superintending Engineer when the respondent was directed to "look after the work", and when he was directed to hold "the additional charge" of Director (Grievance). The petitioners, therefore, have contended that the nature of responsibility and duties cast on the respondent as Superintending Engineer was not such that he could claim presumptive pay.

15. In our opinion, had the petitioners, wanted the respondent to hold additional charge of the post of Superintending Engineer they would have specifically said so in the letter issued in July 2002 rather than mentioning that he would be required "to look after the work" of Superintending Engineer. There is no material before us and we do not find that such material was produced before the Tribunal indicating that the respondent had in fact discharged codal functions. The Tribunal has referred to an Office Memorandum issued on 11th August 1989 by the Department of Personnel and Training stipulating the guidelines for considering whether additional remuneration should be paid to an officer who has been entrusted with an additional charge of another post. It is only when such an officer is required to discharge all duties of the other post, including statutory functions, that an order appointing the officer to hold the additional post could be issued and such an officer would be entitled to additional remuneration as indicated in FR 49. However, when an officer is required only to oversee the routine day to day work of a non-statutory nature, it clearly indicates that the officer would not be entitled to any additional remuneration as he performs only routine day to day duties. The office order issued to such an officer is required to specify the duties he would be discharging or the responsibility cast on him.

16. In the case of Mohd. Swaleh us. Union of India (supra) in the facts and circumstances of that case it was held that the power of appoint a Registrar of the Central Administrative Tribunal was not delegated to the Chairman of the Central Administrative Tribunal. Therefore, an order issued by the Chairman or Chairman of the Central Administrative Tribunal appointing the Registrar would not entitle the latter to additional remuneration under FR 49, held the Supreme Court. The Learned Counsel for the petitioners has drawn our attention to Appendix -- 3 where under FR 49. The power to appoint a government servant to hold a post temporarily or to officiate in more than one post and to fix the pay of subsidiary posts and the amount of compensatory allowance to be drawn, has been delegated to all heads of department. Full power has been delegated only to those who have the power to appoint a government servant permanently in each post concerned. The Learned Counsel submits that as the order directing the respondent to look after the work of Superintending Engineer (Construction) was issued by the Senior Administrative Officer who was not the Head of the Department it cannot be said that the order could be termed as one for holding additional charge. The Learned Counsel for the respondent has submitted that since the appointment of the respondent to work as a Superintending Engineer (Construction) was based on the Ministry''s decision, it amounted to the head of the department exercising his authority which had been delegated as he had full powers to appoint the respondent in the post.

17. We have given our anxious consideration to the issues involved in the present case. We are not convinced that the respondent was told to hold additional charge of the post of Superintending Engineer as opposed to directing him to oversee the routine work of the Office of the Superintending Engineer. As we have noticed above the nature of the communication issued to the respondent when he was directed to oversee the work of Superintending Engineer (Construction) was different from that which was issued to him when he was asked to hold the additional charge of Director (Grievance). The orders were issued by two different authorities. We cannot presume that merely because the petitioner was entrusted with the job of overseeing the work of the office of the Superintending Engineer it amounts to an additional charge having been thrust upon him. The additional remuneration or presumptive pay available under F.R. 49(iii) is to be paid only where a Government Servant is formally appointed to hold charge of another post. Such a formal appointment letter has not been issued to the respondent. Instead under Rule F.R. 49(v), which is applicable in the present case, no additional pay is admissible to a Government Servant who is appointed to perform the routine duties of an another post, irrespective of the duration of such charge.

18. In our opinion, therefore, the decision of the Tribunal to grant the respondent presumptive pay is flawed. The impugned order is, therefore, set aside. The application filed by the respondent for presumptive pay for working as Superintending Engineer (Construction) is dismissed. Urgent certified photocopies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Anindita Roy Saraswati, J.

I agree.