
(2019) 05 DEL CK 0005

Delhi High Court

Case No: Civil Writ Petition No. 1915 Of 2016

Chairman Central
Pollution Control Board
& Ors

APPELLANT

Vs

Nain Singh & Anr

RESPONDENT

Date of Decision: May 3, 2019

Acts Referred:

- Constitution Of India, 1950 - Article 226, 227

Citation: (2019) 175 DRJ 545

Hon'ble Judges: Vipin Sanghi, J; Rekha Palli, J

Bench: Division Bench

Advocate: Saqib

Final Decision: Dismissed

Judgement

''''

Rekha Palli, J",,,,

1. The present writ petition under Articles 226/227 of the Constitution of India assails the order dated 08.09.2015 passed by the Central Administrative,,,

Tribunal (hereinafter referred to as 'the Tribunal' in OA No.3369/2013. The Tribunal, vide the impugned order, has allowed the OA filed by",,,,

the respondent no.1 herein and directed the petitioner to pay the difference of emoluments for the period during which the respondent no. 1 had,,,

performed the duties of the higher post of Finance and Accounts Officer.,,,,

2. The respondent no.1 (hereinafter referred to as respondent), having joined the petitioner Central Pollution Control Board as an Account Assistant",,,,

on 24.09.1981, was promoted to the post of Accounts Officer on 20.12.1985. While working at the said post, the respondent, pursuant to an order",,,,

dated 22.12.2004 issued with the approval of the Chairman of the petitioner, was asked to discharge the duties of the higher post of Finance and",,,,

Accounts Officer (FAO), which duties he carried out satisfactorily from 22.12.2004 to 21.09.2005. The respondent was, thereafter vide order",,,,

30.11.2006, once again asked to discharge the duties of FAO, which he continued to perform till the date of his superannuation on 30.09.2009.",,,,

3. After his retirement when the respondent received his gratuity and leave encashment, he made representations to the petitioner seeking payment of",,,,

difference of emoluments for the higher post of FAO, vis-a-vis the emoluments of Accounts Officer (AO) which had been received by him, and",,,,

prayed for the revision of his retiral benefits by treating his last drawn pay as that paid to an officer holding the post of FAO. Since no action was",,,,

taken on his representation, the respondent preferred the aforesaid O.A. before the Tribunal.",,,,

4. In support of his claim before the Tribunal, the respondent not only relied on the provisions of Rule 49 of the Fundamental Rules, but also on the",,,,

decisions of the Supreme Court in Silva Raj v. Lt.Governor of Island, Port Blair & Ors., [AIR 1993 SC 838] and warika Prasad Tiwari v. M.P.",,,,

State Road Transport Corporation & Anr. [2002 SCC (L&S) 9.] On the other hand, the petitioner opposed the O.A. by contending that though the",,,,

respondent had been asked, from time to time, to look after the work of FAO, he was neither appointed as an FAO nor was he discharging the duties",,,,

of an FAO. The Tribunal, upon consideration of the rival contentions of the parties, allowed the O.A. directing the petitioner to pay the difference in",,,,

emoluments for the post of FAO vis-a-vis the emoluments of A.O along with retiral benefits by observing as under:-",,,,

“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 290, 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.”,,,

5. Aggrieved by the aforesaid, the present writ petition has been filed by the Central Pollution Control Board (CPCB). At the outset, it may be noted”,

that there is no provision for pension in the petitioner organisation and therefore the only question which arises for our consideration in the present,,,,,

petition is regarding the respondent's claim to emoluments, gratuity and other benefits of the post of FAO for the period during which he,,,,,

performed the duties of a FAO.,,,,

6. Mr.Saqib, learned counsel for the petitioner submits that the Tribunal has, while allowing the respondent's claim, failed to appreciate that the,,,,,

respondent, who had never been appointed to the post of FAO, could not seek payment of emoluments accruing to the said post. He further submits",,,,

that the reliance on Rule 49(v) of the Fundamental Rules by the Tribunal was misplaced, as the essential ingredients for invoking the said provision",,,,

were missing in the present case. While drawing our attention to paragraph 7 of the CPCB (Method of Recruitment, Terms and Condition of Service",,,,

of Officers and other Employees other than Member Secretary) Regulations, 1995, he submits that the post of FAO is a post having a pay-scale of",,,,

Rs. 3700-125-4700-150-5000, and that any appointment to the said post could be made by the Chairman only with the prior approval of the Central",,,,

Government, which was never done in the present case and therefore, the respondent was not entitled to the emoluments accruing to the post of",,,,

FAO. He relies on the decisions of the Supreme Court in Mohd. Swaleh v. Union of India [(1997) 6 SCC 200]and a coordinate bench of this Court in,,,,,

Government of National Capital Territory of Delhi & Ors. v. Prem Prakash [124 (2005) DLT 10 (DB)] to contend that unless there is a specific order,,,,,

by the appointing authority directing the incumbent employee to officiate on a higher post, he cannot claim any benefits under Rules 49 (i) and (v) of",,,,

the Fundamental Rules.,,,,

7. On the other hand, the respondent who appears in person, while supporting the impugned order prays that the writ petition be dismissed and that the",,,,

petitioners be directed to pay him reasonable interest for having withheld the payments justifiably due to him. The respondent submits that the orders,,,,,

directing him to officiate in the post of FAO, having been admittedly passed with the approval of the Chairman - who was the appointing authority, the" ,,,,

Tribunal was justified in directing grant of emoluments to him for the period during which he had discharged the duties of an FAO.,,,,

8. Before we deal with the rival contentions of the parties, it may be appropriate to refer to the orders dated 22.12.2004 and 30.11.2006 vide which the" ,,,,

respondent was asked to head the Accounts Division, as also the order dated 29.09.2009 whereunder, upon the petitioner's superannuation, one" ,,,,

Sh. Mahender Singh Bansal was directed to take charge from him as the In-charge, Finance & Accounts. Upon a perusal of these orders, there can" ,,,,

be no doubt about the fact that the respondent was indeed asked to discharge the duties of FAO by the orders of the Competent Authority which, in" ,,,,

this case, was the Chairman." ,,,,

"No.C-20017/01/2003-Admn(P) Date 22.12.2004.,,,,

S.No., "N a m e &

Designation of the

Officer", , Transfer, Reporting Officer

, , From, To,

1., "Sh.O.N.Mathur,

ACO", "Accounts

Div", PCP Division, "I nc ha r ge PCP

Division

2., "Sh.R.P.Gupta, ACO", PCI-I, "U P C D He will

continue to look after

the work of Zoning

Atlas's Accounts

related activities", "Director, UPCD

3.,Sh.D.K.Talaptra,PCI-I Div,Accounts Div,ACO

4., "Sh.Mohan Kapoor,

Asst. ACO",PCP Div,Accounts Div,ACO

5., "Smt.Manjeet Kaur,

Asst",PCI-I,UPC Division,"ACO

(Sh.R.P.Gupta)

6., "Smt.Saroj Bala, PA",A/Cs. Div,PCP Division,"ACO

(Sh.O.N.Mathur)

12. For the aforesaid reasons, we find no reason to interfere with the impugned order in exercise of our writ jurisdiction." ,,,,

13. However we are of the view that since the respondent was unjustifiably deprived of the benefit of the emoluments attached to the post of FAO,,,,

despite his satisfactory discharge of the duties till his superannuation, the petitioner ought to pay him interest at the applicable rate for the delayed" ,,,,

payment of gratuity. It is accordingly directed that the amount in terms of the order of the Tribunal be paid to the respondent along with interest as,,,,

directed hereinabove from the date of passing of Tribunal's order till the actual date of payment.,,,,

14. The writ petition is dismissed with no order as to costs.,,,,