

(2019) 05 DEL CK 0005

In the 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 : 03-05-2019

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 *Dwarika 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 2909, 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

OFFICE ORDER

Consequent upon the closer of World Bank Sponsored Project, the Competent Authority, CPCB has decided to transfer and post the following officers with immediate effect in public interest:

S.No.

Name & Designation of the Officer

Transfer

Reporting Officer

From

To

1.

Sh.O.N.Mathur, ACO

Accounts Div

PCP Division

Incharge PCP Division

2.

Sh.R.P.Gupta, ACO

PCI-I

UPCD 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)

Henceforth, Accounts Division will be headed by Sh.Nain Singh, Accounts Officer.

This issue with the approval of the Chairman, Central Pollution Control Board." (emphasis supplied)

"C-22011/114/2005-Admn(P)

Date.30.11.2006

OFFICE ORDER

In modification of Order No.C-20015/3/05-Admn ®, dated 05.10.2005, Shri.M.Arumugam presently working as Finance and Accounts Officer (on deputation), stands relieved on his own request on 30.11.2006 (AN) from the services of Central Pollution Control Board and thus, repatriated to his parent Department, i.e. Central Board from Workers Education, Ministry of Labour and Employment, Government of India, North Ambazari Road Nagpur-440033, before the completion of the deputation period of three years.

The duties and responsibilities on the Accounts Section will be looked after by Shri Nain Singh Accounts Officer, for the time being, until further orders.

The issues with the approval of the Chairman, Central Pollution Control Board." (emphasis supplied)

"No.C-22012/23/90-Admin(P)

September, 29,2009

OFFICE ORDER

On attaining the age of superannuation by Shri Nain Singh, Accounts Officer on

30.09.2009 (AN), Shri Mahender Singh Bansal, AACO is hereby directed to take charge from Shri Nain Singh ACO & Incharge, F & A with immediate effect and till further orders.

This issues with the approval of Competent Authority, Central Board." (emphasis supplied)

9. Even though the learned counsel for the petitioner vehemently contends that there is nothing to show that the respondent was asked to carry out the duties of an FAO by an order passed by the Competent Authority in accordance with rules, we are unable to agree with the same as all the three orders referred to hereinabove, clearly show that the respondent was specifically asked to discharge the duties of the higher post of FAO by orders issued with the approval of the Competent Authority. Even otherwise, we find that the petitioner had not taken any such stand before the Tribunal in its counter affidavit and, therefore, it is apparent that the petitioner's plea that the competent authority had not directed the respondent to discharge the duties of an FAO is merely an afterthought, and needs to be outrightly rejected. In view of our aforesaid conclusion that the respondent was directed to discharge the duties of FAO with the approval of the Competent Authority, the decisions in Mohd. Swaleh (supra) and Government of National Capital Territory of Delhi (supra) are not applicable herein.

10. On the other hand, we find that the decisions in Selvaraj (supra) and Dwarika Prasad (supra) relied upon by the Tribunal are squarely applicable to the facts of the present case wherein, under similar circumstances, the Supreme Court had directed the grant of emoluments attached to the higher post to the employee for the period during which he was discharging duties attached to the said higher post.

11. Thus, in light of the aforesaid, it would be most unfair if the respondent, having discharged the said duties for almost four years, is deprived of the emoluments attached to the said post. Even on the principle of quantum meruit, the respondent is entitled to the emoluments, including the gratuity and leave encashment, attached to the post of FAO, for the period when he had discharged the duties of the said post.

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.