

(2013) 04 DEL CK 0293
In the Delhi High Court
Case No : Writ Petition (C) 8460 of 2010

Delhi Jal Board

APPELLANT

Vs

Bhagwati Prasad

RESPONDENT

Date of Decision : 29-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0293

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Nishakhat Pandey, for the Appellant; Meenu Mainee, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Nandrajog, J.—FR 49(v) 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:-

(i)

(ii)

(iii)

(iv)

(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) ...

Working in a substantive capacity as an Accountant, on January 04, 2002 the respondent was required to perform duties of the higher post i.e. Assistant Chief

Accountant on the terms contained in the order dated January 04, 2002; and relevant would be to note the first term to the effect that "the entrustment would be in his own pay scale of accountant" was accepted by the respondent.

2. Accepting the entrustment on current duty charge, the respondent started claiming salary in the pay scale of Assistant Chief Accountant and has succeeded before the Central Administrative Tribunal as per the impugned order dated March 12, 2010.

3. With reference to FR 49(v), the reasoning of the Tribunal is as under:-

5. Learned proxy counsel has relied upon FR 49(5) to contend that current duty charge does not entail any extra remuneration.

6. We have carefully considered the rival contentions of the parties and perused the records.

7. As per DoPT OM dated 1.8.1989 in a case where the officer is required to discharge all the duties of other post, including statutory functions, the steps should be taken to process the case for granting the approval of the competent authority and formal orders appointing the officer to the additional post should be issued. On such an appointment, one should be allowed additional remuneration as per FR 49(5). As we do not find on record any such exercise has been taken by the respondent and the applicant having performed the statutory duties attached to the post of ACA, he is entitled to the difference of salary, in view of the decision of the High Court referred to above.

4. We just do not understand the logic of the reasoning. As per O.M. Dated August 01, 1989, if an officer is required to discharge duties of some other post steps have to be taken to obtain approval of the competent authority and formal orders have to be issued. The reason is obvious. Discharge of duties may embrace statutory functions and if there is no proper authorization problems would arise. What has that got to do with payment of wages is not understood. The view taken by the Tribunal that additional pay is required to be paid as per FR 49(v) and because said exercise was not conducted, the respondent would be entitled to the relief claimed for, ignores that as per FR 49(v) no additional pay is admissible to a Government servant who is appointed to hold current charge of the routine duties of another post. The Tribunal has imported something into FR 49(v) which does not even exist.

5. The Tribunal has held in the concluding sentence of paragraph 7 that its view was fortified by a decision of this Court, which has been noted by the Tribunal in para 2 of its decision.

6. The decision is dated November 10, 2009 disposing of WP(C) 6659/2007 and has been downloaded by the counsel for the respondent from the website "indlaw.com".

7. The said decision pertains to one Sher Singh, an employee of the Postal

Department who was given officiating promotion, albeit temporarily, to the higher post and it was in said context i.e. officiating promotion, that Sher Singh was held entitled to wages in the higher pay scale of the post to which he was given officiating promotion.

8. The Tribunal has overlooked the fact that the respondent agreed to the terms of the order dated January 04, 2002 entrusting him current duty charge of the post of Assistant Chief Accountant in his own pay scale of the post of Accountant. The writ petition is accordingly allowed. Impugned order dated March 12, 2010 is set aside and T.A. No. 917/2009 filed by the respondent is dismissed but without any order as to costs.