
(2012) 01 PAT CK 0119
In the Patna High Court
Case No : CWJC No. 4891 of 2011

Dr. M.K. Sharma

APPELLANT

Vs

The Union of India and Another

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Citation : (2012) 3 PLJR 155

Hon'ble Judges : Shiva Kirti Singh, J;Aditya Kr. Trivedi, J

Bench : Division Bench

Advocate : J.P. Shukla and Manish Jha, for the Appellant; Santosh Kr. Singh . for the Union of India M/s. J.S. Arora and Manoj Kr . for the State, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties and perused the impugned order dated 28th July, 2010 whereby O.A. No. 398 of 2004 preferred by the petitioner has been dismissed by the learned Central Administrative Tribunal, Patna Bench, Patna. The petitioner/applicant is an officer of Indian Forest Service, Bihar Cadre, 1975 batch. While he was holding the post of Chief Conservator of Forest on the basis of promotion in the year 1998, he was posted as Regional Chief Conservator of Forest, Patna from the year 2000 onwards. By notification dated 11.2.2002 he was given additional charge of Principal Chief Conservator of Forest (for brevity PCCF). Additional Charge was assumed by the petitioner on 13th February, 2002 and he officiated in that post in ad hoc capacity till 2nd July, 2002. Thereafter he was posted as Principal Chief Conservator of Forest (PCCF) but in his own pay and scale of Chief Conservator of Forest. The petitioner through a letter dated 11th March, 2003 made a demand that since he was holding charge as PCCF which carried a higher scale, he was entitled to the salary of the higher post in view of judgment of the Supreme Court, reported in Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, . When he was not granted any relief even after few reminders, he filed the present case before the

Tribunal.

2. Learned counsel for the petitioner has rightly submitted that the Tribunal instead of examining the validity and legality of petitioner's claim for pay-scale of the higher post held by him from 13th February, 2002, fell in error of proceeding to examine whether the petitioner was legally entitled to hold that post in substantive capacity. There is no dispute that the petitioner was actually made to officiate on higher post and the Tribunal was required only to find out on the basis of relevant rules, whether demand for higher pay for officiation was permissible or not.

3. There is no dispute that Indian Forest Service (Pay) Rules, 1968, govern the issue at hand. According to learned counsel for the petitioner, Rule 8 entitles the petitioner as a holder of a post enumerated in Schedule-III to draw the pay for the higher post because he was appointed to such a post by the State Government. On the other hand, learned counsel for the State of Bihar has submitted that Rule 8 is applicable only when appointment is made to a higher post in regular and substantive manner whereas case of the petitioner was of mere officiation on higher post on ad hoc basis and therefore Rule 9(B) of the aforesaid Rules of 1968 would be applicable. According to him even after 2nd July, 2002 the State Government posted the petitioner on the higher post of Principal Chief Conservator of Forest only as a working arrangement in his own pay-scale.

4. In our considered view, the Tribunal has deviated from the main issue which was only relating to claim made by the petitioner before the State Government for higher pay-scale on account of his working on a higher post and also for sometime holding two posts simultaneously. Such a situation is clearly governed by Rule 9(B) which provides that the grant of additional pay to a member of Indian Forest Service, appointed to hold two posts simultaneously, when the officer is in service relating to a State, are to be governed by the Rules, Regulations and orders applicable to officers of State Civil Services Class-1. That provision immediately attracts Rule 103 of the Bihar Service Code wherein detailed provisions have been made in respect of pay of a Government servant when he holds substantively, as a temporary measure or officiates in two or more independent posts at one time. The power to permit drawing of a reasonable pay for holding additional post has been given to the State Government under Rule 103(b). For the other situation where a person is officiating in a higher independent post, the relevant provision is under Rule 103(a). Various Explanations in notes 1 to 4 are also relevant for deciding such claims. Clearly the Tribunal erred in not considering the relevant Rules noticed above. Hence, without going into the various citations relied upon by counsel for the parties, we set aside the impugned order of the Tribunal and remit the matter back for a fresh decision in accordance with law. It is expected that the Tribunal shall hear it at an early date and decide the claim of the petitioner in accordance with law within, a reasonable period such as four months.

The writ petition is allowed to the extent indicated above. No costs.