
(2013) 05 SHI CK 0083
In the High Court Of Himachal Pradesh
Case No : CWP No. 579 of 2008-C

Mohinder Lal Puri	Vs	APPELLANT
State of Himachal Pradesh and Another		RESPONDENT

Date of Decision : 27-05-2013

Acts Referred:

Citation : (2013) 2 ShimLC 1017

Hon'ble Judges : Sanjay Karol, J;Kuldip Singh, J

Bench : Division Bench

Advocate : M.C. Verma and Mr. Harish Dod, for the Appellant; M.A. Khan, A.A.G. and Mr. R.M. Bisht, Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Interpretation and application of Fundamental Rule 22-C as also F.R. 49(5) is an issue, which petitioner has raised in the present writ petition. Challenge is to the order dated 4.1.2008 passed by the erstwhile Himachal Pradesh Administrative Tribunal, Shimla, in OA No. 3098 of 2004, rejecting petitioner's application for grant of benefit of higher pay scale, for a period for which i.e. 3 1/2 years, he had discharged the duties as Commandant, Home Guards.

2. Petitioner was working as a Company Commander, with the Department of the State. With effect from 23.4.1986 till 31.10.1989 he was given additional charge and allowed to discharge the duties of Commandant, Home Guards, Dharamshala.

3. Respondent-State in their response, clarified that the duties, which the petitioner discharged were only additional in nature.

4. F.R. 49(5), unambiguously clarifies that no additional pay is admissible to a government servant, who is appointed to hold current charge of urgent duties of another post, irrespective of the duration of the additional charge. Also our specific attention is invited to sub-rule (3) of F.R. 49, in support of the petitioner's claim. Said Rule, also, in the given facts, is inapplicable. Petitioner

was not formally appointed to hold charge of another post. Also it cannot be said that the post of Commandant is not in the same cadre/line of promotion. As such, in our considered view, petitioner's claim for grant of additional pay and fixation of higher pay for the purpose of pension stands rightly rejected by the Tribunal.

5. The Apex Court in *Selvaraj Vs. Lt. Governor of Island, Port Blair and Others*, , had the occasion to deal with a case where for justifiable reasons, even though the petitioner could not be promoted, but was also made to discharge the duties of a higher post, his claim for salary for higher post was disallowed.

6. The Apex Court in *Mohd. Swaleh Vs. Union of India (UOI) and Others*, repelled the contention of an employee basing his claim for higher salary under the Rule in question, on the principle of quantum merit.

7. The Apex Court in *D.D. Suri Vs. Union of India (UOI) and Another*, , while dealing with Rule in question has also disallowed the claim of an employee for additional salary of the post for which he was to discharge additional duties. In the said decision, the Court considered the applicability of the fundamental rules in extenso.

8. Thus we see no reason to interfere in the impugned order.

9. The Apex Court in *Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others*, referred to by learned counsel for the petitioner, in the given facts is not applicable. Petitioner therein was promoted as Junior Engineer, however, such promotion was neither on regular basis nor was he paid salary for the said post. It is in these circumstances, the Apex Court granted relief to the petitioner holding that order of promotion cannot be considered as a stop-gap-arrangement. Reliance by the petitioner on the decision of the Apex Court in *Selvaraj Vs. Lt. Governor of Island, Port Blair and Others*, , is misconceived as in the said case also, the Apex Court was dealing with the case where the employee was posted and asked to discharge duties only of a higher post.

For the foregoing reasons, we find no illegality, irregularity or perversity in the order dated 4.1.2008 passed by the erstwhile Himachal Pradesh Administrative Tribunal, Shimla, in OA No. 3098 of 2004, warranting interference. As such, the present writ petition is dismissed.