
(2020) 07 SHI CK 0428
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 739 Of 2019

Neelmani Negi

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 01-07-2020

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 35

Citation : (2020) 07 SHI CK 0428

Hon'ble Judges : Sandeep Sharma, J

Bench : Single Bench

Advocate : Tek Chand Sharma, Sudhir Bhatnagar, Kunal Thakur

Final Decision : Allowed

Judgement

Sandeep Sharma, J

1. Petitioner, Smt. Neelmani Negi was appointed as a Mukhya Sevika in the year 1979. Vide order dated 11.6.1990 (Annexure P-1), she was directed to "hold additional charge of the post of Mukhya Sevika", which at the relevant time was lying vacant. Pursuant to aforesaid order, petitioner assumed additional charge of Mukhya Sevika on 12.6.1990. It is not in dispute that the petitioner discharged duties of the aforesaid post in addition to her own post with effect from 12.6.1990 to 12.5.1999. Petitioner stood promoted on regular basis to the post of Mukhya Sevika in the pay scale of Rs.5000-180-5800-200-7800-220-8100 vide office order dated 10.3.1999 (Annexure P-6).

2. Precisely, the grouse of the petitioner is that she in terms of annexure P-1, continued to discharge additional duties of the post of Mukhya Sevika but respondents denied her additional pay/officiating pay of the post of Mukhya Sevika. Petitioner made various representations to the respondent (Annexures P-2 to P -5) for grant of additional pay for holding additional charge of the post of Mukhya Sevika but, her representations came to be rejected vide order dated 9.11.2004 (Annexure P-1) by Deputy Director, Rural Development Department,

Himachal Pradesh. Against aforesaid order, petitioner approached erstwhile Himachal Pradesh Administrative Tribunal by filing OA No. 2726 of 2005, which is now before this Court, after having been transferred and re-registered as CWPOA No. 739 of 2019.

3. Having heard learned counsel for the parties and perused the material available on record, this court finds that there is no dispute that the petitioner discharged additional duties of the post of Mukhya Sevika for nine years, with effect from 12.6.1990 to 12.5.1999, for which the petitioner is seeking additional pay/officiating pay in terms of FR No. 49. Respondents have rejected the claim of the petitioner on the ground that no additional pay is admissible to a Government servant appointed to hold current charge of the routine duties of another post irrespective of the duration of the additional charge. Respondents have stated in the reply that holding of additional charge of the post of Mukhya Sevika with effect from 12.6.1990 to 12.5.1999, does not entitle the petitioner for any additional pay with annual increments, as has been prayed.

4. At this stage, it would be apt to take note of FR 49, "Combination of Appointments", which provides as under:

"F.R. 49. The State 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 that Government. In such cases, his pay is regulated as follows:-

(i) Where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post ;

(ii) Where a Government servant is formally appointment to hold dual charge of two post in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge: Provided that if the Government servant is appointed to an additional post which carries a special pay, he shall be allowed such special pay;

(iii) Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post or of the highest post if he holds charge of more than two posts in addition to ten percent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 39 days but not exceeding 3 months:

Provided that if in any particular case it is considered necessary that the Government servant should hold charge of another post or posts for a period

exceeding 3 months, the concurrence of the Finance Department shall be obtained for the payment of the additional pay beyond the period of 3 months;

(iv) where an officer is formally appointed to hold full additional charge of another post, the aggregate of pay and additional pay shall in no case exceed Rs.80,000/-.

(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) If compensatory or sumptuary allowances are attached to one or more of the posts, the Government servant shall draw such compensatory or sumptuary allowances as the State Government may fix:

Provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts.]

5. Careful perusal of FR 49(i) clearly suggests that where a Government servant is formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35.

6. Though, in the case at hand, respondents while referring to FR 49(v), have claimed that no additional pay is admissible to a Government servant appointed to hold current charge of the routine duties of another post irrespective of the duration of the additional charge, but, I am afraid that the provisions contained under FR 49(v) are applicable to the present case. Bare perusal of office order dated 11.6.1990 (Annexure P-2) whereby petitioner was directed to hold additional charge of the post of Mukhya Sevika nowhere suggests that the petitioner was appointed to hold current charge of routine duties of another post, rather, vide office order (supra), she was specifically directed to hold additional charge of higher post of Mukhya Sevika, because, such post had fallen vacant on the transfer of one Smt. Neelam Bedi. As has been taken note herein above petitioner on the strength of aforesaid order kept on discharging additional duties of the post of Mukhya Sevika for nine years. At the cost of repetition, it may be reiterated that as per FR 49(i), a Government servant formally appointed to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35 .

7. Though FR 35 authorises the Government to fix the pay of an officiating Government servant at an amount less than that admissible under these Rules, but order annexure P-2 nowhere suggests that in case of the petitioner, competent Authority, exercising power under FR 35, decided to fix pay of the

petitioner at an amount less than that admissible in terms of FR 49.

8. Reply filed by the respondents, wherein claim of the petitioner has been denied, while placing reliance upon FR 49(v), is contrary to its own office order dated 11.6.1990 (Annexure P-2), because this order nowhere speaks of giving current charge of the routine duties of another post, rather, by virtue of said order, petitioner was given additional charge of the post of Mukhya Sevika, as such, petitioner is well within her rights to claim additional pay for holding additional charge of post of Mukhya Sevika in terms of FR 49(i).

9. For making things more clear, this Court deems it necessary to take note of the Guidelines issued for giving additional charge of current duties of another post under FR 49, are reproduced hereunder:

Guidelines on additional charge of the current duties of another post under FR 49. - As per FR 49(iv), no additional pay is admissible to a Government servant who is appointed to hold current charge of the routine duties of another post irrespective of the duration of the additional charge. In practice it is observed that in a number of cases, officers are appointed to hold additional charge of current duties of another post but their duties are not defined in the order and therefore, the officer performs all the functions of the other post including even some statutory function. However, no additional remuneration is paid to him in view of the specific language of the order of the appointment. In certain other cases, an officer is asked to hold additional charge of another post (which implies full charge of the other post), but he is not formally appointed to that post and, therefore, no additional remuneration is paid to him under FR 49. These have led to representations and litigations.

2. With a view to avoiding recurrence of such situations the following guidelines may be followed while considering the question of entrusting additional charge of another post to an officer. --

(i) When an officer is required to discharge all the duties of other post including the statutory functions e.g. exercise of power derived from Acts of Parliament such as Income Tax Act or the rules, Regulations, By-laws made under various Articles of Constitution such as FRs, CCS(CCA) Rules, CSRs, DFPRs, etc. then steps should be taken to process the case for getting the approval of the competent Authority and formal orders appointing the officer to the additional post should be issued. On appointment, the officer should be allowed the additional remuneration as indicated in FR 49.

(ii) Where an officer is required only to attend to the usual routine day-to-day work of non-statutory nature attached to the post, an office order may be issued clearly stating that the officer will be performing only the routine day-to-day duties of non-statutory nature and that he would not be entitled to any additional remuneration the office order should also specify what duties he would be discharging or what duties he would not be discharging.

10. Perusal of aforesaid Guidelines suggests that as per FR 49(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. As per FR(v), it is incumbent upon the Department to specify in the order giving additional charge that the officer is required to only attend usual routine day-to-day work or non-statutory duties attached to that post. In the aforesaid guidelines, it has been specifically instructed that office order may be issued clearly stating that the officer will be performing routine day-to-day duties and not the statutory duties and he would not be entitled to any additional remuneration. The guidelines further provide that the office order should also specify the duties he would be discharging or the duties he would not be discharging.

11. Since in the instant case, it has not been specifically stated in the office order dated 11.6.1990, whereby the petitioner was given additional charge of the post of Mukhya Sevika that the petitioner is only to attend to usual routine day-to-day duties or non-statutory duties attached to the post, claim of the petitioner cannot be rejected by the Department, while placing reliance upon FR 49(v).

12. It is not in dispute that the post of Mukhya Sevika is a higher post than that of Mukhya Sevika, which fact is evident from the fact that the petitioner was later on promoted to the post of Mukhya Sevika. Besides this, there is no clear stipulation in the order that the petitioner would not be entitled to any additional remunerations for holding the charge of the post of Mukhya Sevika. Besides this, in the absence of any clear stipulation in annexure P-2, it is presumed that the petitioner has discharged the statutory and non-statutory functions attached to the post.

13. Consequently, in view of above, present petition is allowed, Annexure P-1 dated 9.11.2004 is quashed and set aside. Respondents are directed to calculate and pay the additional remunerations payable to the petitioner, in terms of FR 49, within four weeks from today.