
(2016) 08 DEL CK 0023
In the Delhi High Court
Case No : Writ Petition (Civil) 4675 of 2015

O.P. Srohe

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Constitution of India, 1950 — Article 16, 226
Fundamental Rules — Rule 45

Citation : (2016) 5 SLR 786

Hon'ble Judges : Mr. G.S. Sistani and Mr. I.S. Mehta, JJ.

Bench : Division Bench

Advocate : Mr. Asish Nischal, Advocate, for the Petitioner; Mr. Kirtiman Singh, CGSC with Mr. Waize Ali Noor, Mr. Pranav Agarwal and Mr. Prateek Dhanda, Advocates for UOI, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J. (Oral)—The petitioner is aggrieved by the order passed by the Central Administrative Tribunal (hereinafter the "Tribunal") dated 2nd July, 2014 in O.A. No. 1728/2012 whereby his application seeking additional remuneration based upon the additional charge of post held by him has been dismissed.

2. The brief facts which are required to be noticed for disposal of this writ petition are that in the year 2007, the petitioner was working as "Deputy Secretary" in the Ministry of Women and Child Development, Government of India (hereinafter the "WCD"). While working in the aforesaid post, the petitioner was given the additional charge of the post of "Secretary" in the Central Adoption Resource Authority (hereinafter the "CARA") with effect from 22nd November, 2007 to 8th July, 2009. The petitioner had claimed before the Tribunal that the said charge was given against his wishes. However, he continued to perform his dual duties, both as Deputy Secretary in WCD and Secretary in CARA.

3. The original post of the petitioner was in Grade Pay of Rs. 7600 with a pay

scale of Rs. 15,600-39,100 in PB-3; while the pay of Secretary, CARA at that time was in Grade Pay of Rs. 8700 with a pay scale of 37,400-67,000 in PB-

4. Aggrieved by the same, on 4th March, 2009, the petitioner made a representation seeking additional remuneration for holding a dual charge as per the provisions of FR 49(iii). The WCD rejected the representation made by the petitioner on the ground that the post held by him as additional charge was the post in an autonomous body and therefore, he was not eligible for additional remuneration for holding dual charge under FR 49.

5. The Tribunal, while relying on FR 49, rejected the claim of the petitioner on two grounds, i.e. as approval was not sought from the competent authority and as the additional post was not "under the government", which has led to the filing of the present writ petition.

6. Learned counsel for the petitioner submits that since additional charge was forced upon him, he would be entitled for extra remuneration. He also relies upon FR 49, more particularly clause (iii), to canvass his argument that for the first 3 months no permission was required from the competent authority, i.e. the Department of Personnel and Training (hereinafter the "DoPT") and only after 3 months permission was required from the DoPT. He further submits that the permission has been illegally withheld and thus he should be paid the difference of amount.

7. Learned counsels appearing for the respondents, while placing strong reliance on FR 49, contend that the benefit would accrue to the petitioner only if he was working under the Government itself, whereas CARA is an autonomous body and thus he cannot derive benefit of FR 49.

8. We have heard the learned counsel for the parties. Before rival submissions advanced by the counsels can be considered, we deem it appropriate to reproduce the relevant portion of FR 49, which 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:-

....

(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 45 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 Department of Personnel and Training shall be obtained for the payment of the additional pay beyond the period of 3 months;"

(Emphasis Supplied)

9. A careful reading of the opening words of FR 49 reveals that FR 49 would apply as a temporary measure for a person, who is holding a post in a substantive or officiating capacity, is appointed as to officiate in one or more other independent posts under the Government. No doubt, under clause (iii) of FR 49, for the first 3 months no permission from DoPT is required and if the person exceeds to officiate on the temporary post beyond three months, permission from DoPT would be required. We also take note of an OM bearing No. 4/4/99-Estt. (Pay-II) dated 28th January, 2000 issued by the DoPT, wherein it was clarified that FR 49 does not apply to additional charge is given in posts of Autonomous Bodies. The relevant part of the same reads as:

"2. Instances have come to notice of this department when the Government servants have been given full charge of the post outside the Government, viz., Public Sector Undertakings, Autonomous Bodies, Registered Societies, etc. The question of entitlement to additional pay under FR-49 to the Government servants formally appointed with the approval of Competent Authority to hold the full additional charge of the posts in the PSUs, Autonomous Bodies, etc., has been considered in this Department in consultation with the Ministry of Finance and it is clarified that neither such appointments nor the additional pay for holding additional charge in such cases is permissible under FR-49."

(Emphasis Supplied)

10. There is no dispute as to the fact that CARA was an autonomous body at the relevant time and presently, has become a statutory body under the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015.

11. In our view, the Tribunal has rightly held that FR 49 would not be applicable to the case of the petitioner, as sub-clause (iii) sought to be relied upon by the counsel for the petitioner would also not apply to the facts of the present case. The additional charge of the post given to the petitioner was not under the government, but under a then autonomous body. Resultantly, we find no infirmity in the order passed by the Tribunal. Hence, there is no ground to interfere in the proceedings under Article 226 of the Constitution of India.

12. The writ petition is accordingly dismissed.