
(2012) 07 DEL CK 0633

In the Delhi High Court

Case No : Writ Petition (Civil) No. 13837 of 2004

R.K. Bansal

APPELLANT

Vs

UOI

RESPONDENT

Date of Decision : 11-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0633

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Ravindu Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

Sudershan Kumar Misra, J.—This writ petition impugns the decision rendered by the Central Administrative Tribunal, Principal bench, New Delhi, on 31st March, 2004 in OA No. 1800/2003. By that decision, the Original Application of the petitioner was dismissed after concluding that the petitioner is not entitled to the monetary benefits of the post of Director (F & VP) in the Ministry of Food Processing Industries. In short, the petitioner's case is that to deny him the monetary benefits of the post of Director (F & VP); while continuously taking the full work of that post from him right from 25.1.1991 till his retirement nearly 16 1/2 years later, on 31.3.2007, under the garb of a, "current charge", and that too after bestowing full powers of that post, including that of a Licensing Officer, on him, is, under the circumstances, not sustainable in law.

2. In the year 1980, the petitioner was directly recruited as Joint Director (Consultancy Services), in the Directorate of Food and Vegetable Products. This post was later re-designated as Joint Director (F&VP). At the relevant time, when the question of promotion of the petitioner to the post of Director (F&VP) arose; recruitment to that post was governed by the Food and Nutrition Board (Non-Secretariat Gazetted Post) Recruitment Rules, 1967. Admittedly these rules did not envisage promotion to the next post of Director (F&VP) from the post of Joint

Director, which was held by the petitioner, because the feeder grades prescribed for that post were only the posts of Deputy Director (F&VP) and Senior Marketing Officer (Fruit Products).

3. Later on, the Ministry of Food Processing Industries was set up; and the Directorate of Food and Vegetable Products, where the petitioner was employed, along with the post of Director (F&VP), was transferred to that Ministry. Since the extant Rules did not envisage the post of Joint Director (F&VP) as one of the feeder grades for filling the next post in the hierarchy, which was of Director (F&VP); the petitioner represented that the Recruitment Rules be amended to bring him within the zone of eligibility for promotion to the said post of Director (F&VP). That representation was rejected by the Government on 6th January, 1986. Aggrieved, the petitioner filed O.A. No. 13/86 before the Tribunal for a direction to the Government to appropriately amend the recruitment rules. The said O.A. was dismissed on 9th April, 1987, on the ground that the Tribunal would not like to interfere in the amendment of the Recruitment Rules. The petitioner appealed to Supreme Court, but later on he withdrew that appeal.

4. On 31st December, 1990, the post of Director (F&VP) fell vacant. As already noticed, recruitment to this post is governed by the Food and Nutrition Board (Non Secretariat Gazetted Post) Recruitment Rules, 1967. Admittedly, the rules provide for promotion as the first method only from the grades of Senior Marketing Officer (Fruit Products) and Deputy Director (F&VP), with five years regular service in the respective grade. No officer from these two grades had the requisite length of service to be eligible for promotion.

5. Consequently, although the petitioner was also not eligible for promotion to that post because he did not hold either of the two feeder posts prescribed by the rules as aforesaid; a notification was issued by the Ministry of Food Processing Industries on the 25th January, 1991, giving the petitioner the current charge of the duties of the post of Director (F&VP). By the same notification, the petitioner was also appointed as the Licensing Officer under the Fruit Products Order, 1955. The said notification of 25th January, 1991, reads as follows:

"The President is pleased to appoint Shri R.K. Bansal Joint Director (Consultancy) in the Ministry of Food Processing Industries to hold the current charge of the duties of the post of Director (F&VP) in addition to his own duties as Joint Director (Consultancy) in the Ministry of Food Processing Industries until further orders. The President is also pleased to appoint Shri. R.K. Bansal, as the Licensing Officer under the Fruit Products Order 1955 until further orders."

6. After the petitioner had functioned for nearly four years as the Director (F&VP) pursuant to the aforesaid order, the respondent issued an order on 14.12.1994 appointing one Sh A.K. Paliwal to the post of Director (F&VP). Aggrieved, the petitioner moved O.A. 2547/1994 before the Central Administrative Tribunal, New Delhi. On 25.10.1995, the Tribunal quashed the appointment of Mr. Paliwal.

The matter rested there.

7. It appears that after he had continuously held the aforesaid charge for more than 8 1/2 years, the petitioner requested the respondent on 25th August, 1999 for payment of salary in the grade of Director (F&VP); he also sought arrears of pay, with effect from 25th January, 1991, i.e., the date on which he was first given charge of the duties of that post. He renewed his request on 9th October, 2002. It is, therefore, obvious that at least from 25th August, 1999, the respondent became aware of the petitioner's claim for salary and arrears commensurate to the grade of Director (F&VP). Almost immediately thereafter, on 4th October, 1999, the aforesaid current duty charge conferred on the petitioner by the notification of 25th January, 1991, was terminated. Aggrieved by this, the petitioner moved O.A. No. 2181/99 before the Tribunal. The said O.A. was allowed by the Tribunal on 25th January, 2000 and the impugned order was quashed. Aggrieved by that decision, the respondent filed Writ Petition (C) No. 580/2000 before this Court. That petition was dismissed by this Court on 29th May, 2002 and the Tribunal's order favouring the petitioner was upheld. After another year, the petitioner was suspended on some unrelated grounds, with effect from 15th September, 2003. That suspension order was reviewed and he was reinstated by the competent authority on 23rd March, 2004, and he continued to function as before till his retirement on 31.7.2007.

8. Since he had received no reply to his aforesaid representations dated 25th August, 1999 and 9th October, 2002 requesting salary and arrears commensurate to the grade of Director (F&VP), with effect from 25th January, 1991, the petitioner filed O.A. No. 1800/2003 before the Tribunal. That petition was dismissed by the Tribunal on 31st March, 2004. Aggrieved by that dismissal, the petitioner has invoked the writ jurisdiction of this Court in the instant petition.

9. By its order of 31.3.2004, which is impugned before us, the Tribunal has concluded that the petitioner was not entitled to the monetary benefits of the post of Director (F&VP) because no formal orders appointing him to that post had been issued by the respondent.

10. Before us, the decision of the Tribunal is challenged by the petitioner primarily on the grounds that the Tribunal failed to appreciate the fact that his case was also covered under Fundamental Rule [FR] 49 and other instructions related to the subject, because, in addition to his normal duties, he was also discharging statutory duties under the Fruit Products Order, 1955 normally exercisable by the Director(F&VP), such as, holding of Departmental Promotion Committees and acting as the Disciplinary Authority under the Statute. And furthermore, even the powers of the Licensing Officer, which could only be exercised by the Director (F&VP), were specifically conferred upon him by the respondent.

11. In reply, counsel for the respondent contends that the petitioner has no case in view of the provisions of sub-clause (v) of F.R.49 which states that no

additional pay is admissible to a government servant who is appointed to hold current charge of routine duties of another post irrespective of the duration of the charge. According to him, in fact the petitioner was only given, "routine duties", and therefore, the question of any additional pay being given to the petitioner does not arise. As regards the appointment of the petitioner as the Licensing Officer under the Fruit Products Order, 1955, in substance, the contention of learned counsel for the respondent is that notwithstanding the fact that u/s 2(g) of that order, the Director (F&VP) is the Licensing Officer; in this case, that appointment was conferred separately and did not form part of the appointment of 25th January, 1991, ".....to hold the current charge of the duties of the post of Director (F&VP)....."

12. In addition, counsel for the respondent has also attempted to justify the denial of relief to the petitioner on the ground that since the post that he was substantively holding, i.e. Joint Director (Consultancy), was an ex-cadre post; and he did not belong to either of the two feeder grades in the Cadre from which an officer can be substantially appointed as Director (F & VP); therefore he did not have the requisite qualification to hold the said post of Director (F & VP). He states that the Ministry of Food Processing Industry came into being in 1988. At that time, the post of Joint Director (Consultancy); which was the petitioner's substantive post; stood transferred to the Ministry. However, the Recruitment Rules did not incorporate that post in the cadre list. Therefore, till the Recruitment Rules were amended, the petitioner could not be appointed as Director (F & VP) and for this reason, the petitioner is not entitled to the pay of Director (F&VP).

13. Fundamental Rule [FR] 49 which falls under Chapter VI, titled, "Combination of Appointments" in Swamy's Compilation of Fundamental Rules and Supplementary Rules, 18th Edition, regulates the pay of Government Servants who are appointed to officiate as a temporary measure in one or more independent posts. FR 49 is as follows:-

CHAPTER VI

Combination of Appointments

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) 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 appointed to hold dual charges of two posts 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 per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding [49] 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;

(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. 26000];

(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 Central Government may fix:

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

14. In this case, the relevant portion of the notification of 25.1.1991 appointing the petitioner, that has been reproduced above, uses the words, "...to hold the current charge of the duties of the post of Director (F & VP).....". As far as the duties of the post of Director (F&VP) are concerned, there can be no doubt, they include both routine administrative work, as well as functions required to be carried out under statutes, notifications etc. If the petitioner had been appointed to the post substantively, then the notification would undoubtedly have read, "...is appointed to the Post of?. Instead of that, the petitioner had in fact been appointed, "...to hold current charge of the duties of the post.....till further orders." The issue therefore is whether, under this appointment to hold the, "current charge of the duties of the post of Director (F&VP)"; the duties assigned to the petitioner under the notification have been truncated in any way.

15. Initially, while the matter was being argued before us, we had felt that at least as far as the plain, grammatical meaning of the words of the notification of 25.1.1991 is concerned, there could be no doubt. However, faced with respondent's counsels insistence that, even the very words used, amount to the conferment of, "routine duties", only; we are obliged to go into that aspect of the matter also while ascertaining the scope of the petitioner's appointment. It becomes necessary therefore, to examine the expressions, "...to hold current charge of..." and "...the duties of the post...", used in the aforesaid appointment notification. The first expression, "... to hold current charge of..." is further qualified by the phrase, "...till further orders..", used at the end of the notification. The word, "current", in the expression, "current charge"; which has been used as an adjective to define the nature of the charge, means, "belonging to the present time; happening now" (Concise Oxford Dictionary of Current English, 8thEdn). According to the same dictionary, the next word, "charge", which has been used as a noun here, means, "-n.....a task, duty or commission.... or thing entrusted;..". In the context, the two words can only mean, the thing entrusted at the present time or, for the time being. The next phrase, "duties of the post", spell out the nature of the current charge, or, to put it differently, clarify what is that thing that the petitioner, as the person named in the notification, is being entrusted with, for the time being. It follows therefore, that the notification of 25th January 1991, clearly entrusted the petitioner with the duties of the Post of Director (F&VP) for the time being, till further orders; and there is nothing, at least in the language of the notification of 25.1.1991, to suggest that the petitioner is being appointed to discharge only some of the duties or that his appointment is restricted to only the, "routine duties", of the post in question.

16. Counsel for the respondent has also tried to suggest that because the petitioner merely held an ex cadre post, which was not one of the two feeder posts prescribed by the Rules for substantive appointment to the post in question, therefore, the powers of the President of India were limited to only conferring charge of, "routine duties" of that post; and consequently, even an order conferring all the duties of the post in question, must be construed as one limited only to what he calls, "routine administrative duties" of that post. We do not think this argument is well founded. While there is no gainsaying the power of the President, or in other words, of the Government, to limit the scope of the powers being conferred on an officer if it thinks fit to do so; it cannot be, and nothing has been brought to our notice to demonstrate that even if the order of the President is not qualified in any way; and the appointment on the face of it covers the entire scope of the duties of that post; that order must nevertheless be construed as granting only some of the powers of that post, and not the others, because of some unique, inherent limitation in the power of the President which compels him to entrust only what is referred to as, "routine administrative work" to such an officer, but not, "statutory duties". If the president did not have the power to entrust temporary charge of the duties of such a post, for the time

being, to an officer who is not eligible for substantive appointment to that post; then the notification entrusting such a charge would be bad in its entirety; and the issue whether the charge conferred by such an appointment was in the nature of a full or complete charge of the widest scope and amplitude, no different from that conferred upon any eligible officer substantively, or whether it was limited to only routine administrative duties, would be immaterial.

17. In this context, we also find that while sub rules (i) & (ii) of FR 49 refer to appointment in the same cadre and same office. However, sub rule (iii) is slightly different. It mentions appointment to a post 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.". This shows that FR 49 contemplates both situations; where the post is in the same cadre and line of promotion, and also where it is not so. If the government did not even have the power to appoint in this manner, there would have been no occasion for the government to make this sub rule settling the pay of an officer in exactly such a situation. In the same context, although some limitations to their application are prescribed in sub rules (i), (ii) & (iii) themselves; nevertheless, sub rules (iv), (v) and (vi) are also in the nature of provisos or qualifications or limitations on the entitlement to pay conferred by sub rules (i), (ii) & (iii). Of these, sub rule (v) is the only part of FR 49 which contemplates a situation where power is conferred to carry out only, "routine duties", of another post. This postulates that in such a situation, "no additional pay" is admissible to a government servant. This sub rule obviously operates as one of the provisos limiting the entitlements carved out in sub rules (i),(ii) & (iii) of FR 49. The fact that it has been found necessary to provide separately for cases where a limited, or truncated, charge is given; which amounts to only, "routine duties", of a post, only goes to reinforce the conclusion that the Government does indeed have the power to grant full charge of the duties of a post in circumstances similar to that of the petitioner.

18. Furthermore, looking to the scheme of FR 49 and the language of sub rule (v) thereof; the limitation placed on additional pay by sub rule (v), in that it will not be admissible, is confined only to cases where the appointment in question is only to hold current charge of, "routine" duties, and not otherwise. Whether the charge is given of a post in the same cadre or the same line of promotion as the post held by the officer concerned or not, is wholly irrelevant here, and makes no difference. The submission of respondent's counsel that sub rule (v) debars the petitioner from claiming the pay of the post in question because he is ineligible to hold that post substantively since he was neither in the same cadre to which the post belongs, nor was the post in the same line of promotion as the substantive post held by him; is without substance and merits rejection.

19. Counsel for the respondent has also argued that in fact no right can accrue to the petitioner under FR 49(iii) because, according to him, the expression, "formally appointed to hold charge", used there means holding, "complete charge" of the post; and it is only then that the consequences of sub-rule (iii)

follow. After positing this equivalence, he then submits that since the powers of the Licensing Officer under the Fruit Products Order, 1955, which are normally exercised by the Director (F&VP), have been conferred on the petitioner separately, albeit by the same notification, it must be taken to mean that the preceding portion of the notification of 25.1.1991, appointing him to hold charge of that post, did not give him, "complete charge". To begin with, we are unable to understand the process by which learned counsel for the respondent has equated the phrase, "formally appointed to hold charge", with the idea of holding, what he terms as, "complete charge" specially in the context of the purpose of this sub-rule. In the language of FR 49(iii) at least there is nothing to suggest this. The adverb, "formally", used in that phrase, derives its meaning from the adjective, "formal", which means, "Used or done or held in accordance with rules, convention, or ceremony..... in accordance with recognized forms or rules" (see Concise Oxford Dictionary of Current English 8th Edn). Therefore, the only requirement is that the appointment in question must have been done in accordance with the rules. In other words, it should have been made by the person authorized to do so and in the prescribed manner. Here, this has been done. Indeed, counsel for the respondent has not even ventured to suggest that the petitioner's appointment was improper, or that it ought to have been made by some other Authority. The submission that the President did not have the power to confer, what he calls, "full charge" of the post has been examined by us and rejected in the preceding paragraphs. Also, we can find nothing to suggest that the word, "charge" in the phrase, "formally appointed to hold charge", means only complete charge of a post. On the contrary, the fact that sub clause (v) has been inserted in FR 49 goes to show that the current charge given to an officer as a temporary measure, can also be limited to the routine duties of another post. We also notice that it is only in FR 49 sub clause (i), which admittedly has no application to the present case, that the expression, "to hold full charge.....", has been used, whereas sub clause (iii) of FR49, with which we are concerned, merely uses the expression, "to hold charge of". This also leads to the conclusion that the framers of FR49 were conscious of the distinction between the expression, "to hold full charge of" and the expression, "to hold charge of", and the word "full", was omitted in FR 49 sub clause (iii) to serve a definite purpose and, therefore, the expression, "formally appointed to hold charge" employed in FR49 sub clause (iii), cannot be taken to mean, "formally appointed to hold "full" charge?. The only qualification placed by the appointment notification in question here regarding the nature of the charge given, is that it is a, "current" charge. The word, "current", as we have analysed earlier, only refers to the periodicity of the charge; and not to the scope of the duties conferred, in that it does not truncate or limit them in any way. Therefore, to our mind, the requirement of FR 49 sub clause (iii) has been satisfied by the aforesaid appointment notification of 25th January, 1991. The other part of the argument to the effect that the separate conferment of powers of the Licensing Officer by the same notification should be taken to imply that the government intended to confer only a limited charge of "routine administrative duties" of the

post of Director (F & VP), also does not impress us. This is because nothing prevented the government from specifically limiting the scope of the charge if that was really the intention, and, in fact, as concluded below, the intention appears to have been quite to the contrary. Indeed, we are convinced that the government resorted to this device of a separate additional appointment to make doubly sure that there is no challenge to the petitioner exercising all the powers of the Post in question, which he admittedly did exercise.

20. In pressing his case to the effect that the petitioner must be denied the pay of the post of Director (F&VP) on the plea that his case is covered only by sub rule (v) of FR 49, counsel for the respondent has tried to suggest that in fact, except sub rule (v), none of the other sub rules has any application in the petitioner's case. According to him, sub rule (iii) of FR 49 has no application for the reason that if sub rule (iii) is interpreted to mean that officers such as the petitioner, who are appointed to hold charge of posts to which they are not eligible because they either do not belong to the same cadre or are not in the same line of promotion, are entitled to the pay of the higher post, then sub rule (v) will be rendered redundant. We are afraid that counsel is mistaken. In his eagerness to bring the petitioner's appointment notification squarely within sub rule (v) with a view to justifying the denial of pay for the higher post to the petitioner, he has been unable to perceive the obvious difference between the two provisions. Both the sub rules have their own clear cut roles to play. On a true construction of the sub clauses of F.R.49; while the main sub rules are actually sub rules (i), (ii) and (iii); sub rule (iv) merely restricts the amplitude of sub rule (iii). Similarly, Sub-rule (v) would be applicable in cases where only, "routine duties", are given. Therefore, sub-rule (v) is also to be read as a limiting clause. It clarifies that no additional pay will be given if the conditions mentioned therein are fulfilled. However, if those conditions are not fulfilled, then this sub-rule would not be attracted. Thus, what FR 49 (v) does is it reduces or dilutes the benefit available, inter alia, under FR 49 (iii) by saying that no additional pay would be given where the person is discharging only "routine duties". In other words, even if, in a given case, an officer is appointed to hold charge of another post, but the nature of the charge in question is limited in scope to only, "routine" duties, then the benefit of clause (iii) would be unavailable. Obviously, if what he is discharging is something more than mere, "routine duties", that benefit would be available. Looked at in this way, both the sub rules (iii) and (v) have their own unique functions and there is no force in the submission of counsel for the respondent that if the petitioner's case were to be considered as falling under sub rule (iii) then sub rule (v) would be rendered redundant. It is also possible that counsel for the respondent has first taken for granted that the appointment order in question is unquestionably one conferring only, "routine duties" and then propounded the proposition that if such an appointment is taken to fall under sub rule (iii), it would render sub rule (v) redundant. If that is so, then we can only say that counsel has missed the point totally.

21. Under the circumstances, and since we have concluded that the appointment

notification of 25.1.1991 satisfies the requirements of FR 49(iii), the requirements of the proviso to that sub rule are of some importance and need to be addressed by us. That proviso states as follows;

"(iii)....

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;"

This proviso to sub rule (iii) of FR49 places an obligation upon the respondent to obtain the concurrence of the Department of Personnel and Training in case the charge as contemplated under this sub rule is required to hold charge for more than 3 months. The obligation was cast upon the respondent. The fact that the respondent failed to carry out its obligation for any reason whatsoever; be it under a mistaken impression as to the nature of charge or otherwise; cannot be allowed to stand in the way of complete justice to the petitioner once this court has concluded that his appointment falls under the ambit of FR 49(iii) particularly since we cannot see how the petitioner can be held responsible for this lapse on the part of the respondent.

22. Our attention has also been drawn to, "Guidelines on additional charge of the current duties of another post under FR 49" issued by the Department of Personnel and Training, O.M. No. 4/289-Est. (pay-II), dated 11.8.1989 which appears to be directly on the point. It states as follows;

"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 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 the 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 his 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 the other post including the statutory functions, e.g., exercise of power 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, CS Rs. , DFP Rs. , 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."

The above guidelines bring out the practical difficulties faced by officers in situations where they are either appointed to hold current charge of another post or merely asked to hold additional charge of another post without being formally appointed to that post, often without the duties they are required to perform being clearly defined. It is to address such anomalous situations that paragraphs 2(i) and (ii) reproduced above, have been notified. A reading of those paragraphs clearly bear out the petitioner's case. Para 2(i), above, makes it clear that if the officer is required to discharge all the duties of the post, including the statutory functions, formal orders appointing the officer to the additional post should be issued. And on such appointment, the officer should be allowed additional remuneration in terms of FR49. In this case also, the petitioner has been appointed to hold current charge of the duties of the post in question through a formal appointment. To remove any doubts, we are satisfied that, in the context of the aforesaid guidelines, and particularly the reference to the type of duties envisaged in the opening paragraph of the guideline, and the difficulties which the sub paragraphs thereof have been designed to overcome; the expression, "...formal orders appointing the officer to the additional post...", includes formal orders appointing an officer to hold current charge of the duties of another post, as in the instant case. We are persuaded to this view for the reason that if the expression, "formal orders appointing the officer to the additional post" envisaged in paragraph 2(i) of the said guideline, is interpreted to mean only a substantive appointment to another post, then, this guideline as a whole would fail to address the difficulties that have been highlighted in the opening portion thereof. It would also fail to fulfill the avowed intention expressed in the second paragraph of the guideline, of which sub para (i) forms a part. Furthermore, such an interpretation would also militate against the fact that it is issued in furtherance of the objects of FR 49; which clearly has as its object the regulation of pay of officers in those cases where a government servant has been appointed, "to officiate as a temporary measure in one or more of other independent posts at one time.....". (Emphasis added. See FR 49). It follows, therefore, that since the object of FR49 is clearly to regulate pay specifically in those situations where government servants are appointed to officiate as a temporary measure in another post; the aforesaid phrase extracted from

guideline 2(i) cannot, and does not, envisage a substantive appointment to the additional post for which remuneration under FR 49 is being contemplated therein. Consequently, since the required formal notification was in fact issued in the name of the President on 25.1.1991 by the government, the petitioner was clearly empowered to discharge all functions of the post of Director (F&VP) including statutory functions. Our view is further fortified by the fact that admittedly, no office order of the type envisaged in para 2(ii) of the aforesaid guideline was issued by the respondent.

23. Indeed, throughout the protracted course of arguments, and despite repeated assertions to the contrary by the petitioner, learned counsel for the respondent has failed to demonstrate to our satisfaction even a single function of a substantively appointed Director (F&VP), which the petitioner either did not, in fact, discharge; or was prohibited from discharging, pursuant to the aforesaid notification of 25th January, 1991, appointing him to hold the current charge of the duties of that post. The petitioner specifically claims to have discharged all the functions of the post of Director (F & VP) which included; convening of Departmental Promotion Committees; writing of Annual Confidential Reports; acting as the Licensing Officer, etc. for a period of more than 16 1/2 years, right from 25.1.1991 till his retirement in July, 2007.

24. In order to substantiate his contention that the notification of 25.1.1991 had conferred only, "routine administrative duties" of the post of Director (F & VP) upon the petitioner; and that he was not empowered to exercise statutory functions, thereby disentitling him to the pay of the higher post of Director (F & VP), counsel for the petitioner has also tried to rely upon the later portion of the aforesaid notification which further confers the appointment of Licensing Officer under the Fruit Products Order, 1955, upon the petitioner. The said portion of the notification reads as follows:

"...The President is also pleased to appoint Shri R.K. Bansal as a Licensing Officer under the Fruit Products Order, 1955 until further orders."

He has tried to suggest that the fact that since the Government has thought it fit to appoint the petitioner as a Licensing Officer, separately, albeit as a part of the same notification, demonstrates that the scope of the charge of the duties of the post of Director (F&VP), which was given to the petitioner by the said appointment, was limited to, "routine duties" only. His reasoning, as far as we have been able to ascertain, is that normally, a substantively appointed Director (F&VP) also functions as the Licensing Officer under the Fruit Products Order, 1955; and therefore, the separate conferment of the appointment as Licensing Officer can only mean that it was never intended to appoint the petitioner to exercise the full charge of the duties of the post of Director (F&VP). In our view, this contention also has no merit for a number of reasons.

25. Firstly, as we have already analyzed above, there is nothing either in the language of the appointment notification of 25.1.1991 or in the provisions of FR

49 or even in the aforesaid Guidelines of additional charge on current duties of another post issued on 11th August, 1989, all of which have been reproduced and discussed above, to suggest that the appointment is limited to routine administrative duties only.

26. Secondly, the expression, "Licensing Officer", has been defined in Rule 2(g) of the Fruit Products Order, 1955, as follows:-

"Licensing Officer" means the Director (Fruit and Vegetables Preservation), Food and Nutrition Board, Department of Food, Ministry of Agriculture, Government of India and includes any other officer empowered in this behalf by him with the approval of the Central Government."

Once, we have concluded on the basis of the aforesaid analysis that the appointment notification of 25th January, 1991 conferred an unrestricted charge of the duties of the post of Director (F&VP), to the petitioner; the petitioner automatically came within the ambit of the aforesaid definition of the Licensing Officer and could exercise all powers in that regard and, in our view, the further specific appointment of the petitioner as the Licensing Officer, was unnecessary.

27. Thirdly, although, the respondent is supporting the aforesaid order separately appointing the petitioner as Licensing Officer; we have some doubts about its validity. This is because we notice that from the definition of, "Licensing Officer", under the Fruit Products Order, 1955, which has been extracted above, that, "Licensing Officer", means either the Director (F&VP), himself, or any other officer, "empowered in this behalf by him..... with the approval of the Central Government." In other words, for there to be a valid empowerment of some officer, other than the Director (F&VP), as the Licensing Officer, under the Fruit Products Order, 1955; that officer must first have been, "empowered in this behalf", by the Director (F&VP) himself. Once such an empowerment is done by the Director (F&VP), it is then to be approved by the Central Government. In this case, since the post of Director (F&VP) was vacant, there was no Director (F&VP) to empower the petitioner, who was only functioning as the Joint Director (F&VP) in the Ministry of Food Processing Industries at that time. If there could be no empowerment in terms of the aforesaid section 2(g), there could be no question of the Central Government giving its approval or of appointing the petitioner as the Licensing Officer. And once he was appointed to discharge the duties of the Post of Director (F&VP), the power of Licensing Officer automatically vested in him.

28. Fourthly, the only reason that we have been able to fathom for the respondent to have separately notified the petitioner's appointment as, "Licensing Officer", is that since the substantive post held by him was a subordinate ex cadre post; there was some doubt with regard to the legitimacy of the petitioner to function as Licensing Officer also while he was holding the current charge of the duties of the post of Director (F&VP) in terms of his appointment notification of 25th January, 1991 and, therefore, in order to

obviate any objections that may be raised, and keeping in view the sensitive nature of the post, the respondent decided to also notify his appointment separately as the, "Licensing Officer" under the Fruit Products Order, 1955, notwithstanding the fact that they had no recommendation in hand in terms of Rule 2(g) of that order. We might also mention that the only circumstance that we have been able to think of under which the power of Licensing Officer under the Fruit Products Order can be conferred without a recommendation in that behalf as envisaged in Rule 2(g) thereof, is when the power of the Director (F&VP) is being conferred on an officer by appointing him as such. However, in such a case, the power of the Licensing Officer is conferred on the Director (F&VP) by virtue of the Fruit Products Order, 1955 itself, and any further notification in this behalf by the Government would be superfluous. It follows therefore, that in this case also, either the conferment of the power of Licensing Officer separately by the same notification is bad because it purports to confer the power on an Officer other than the Director (F&VP) without his empowerment in this behalf by the Director (F&VP); or the said notification is superfluous since it merely purports to clothe the petitioner with a power that has automatically accrued to him with his appointment to discharge the functions of the Director (F&VP). We are inclined to prefer the later option and consider that notification appointing him as Licensing Officer as merely superfluous.

29. Fifthly, regardless of the legal validity of the aforesaid notification appointing the petitioner as the Licensing Officer, the one thing that emerges clearly under the circumstances is that the respondent expected, and definitely wanted, the petitioner to exercise all the duties of the Post of Director (F&VP) without exception, and to this end the respondent was prepared to go to the extent to issuing a separate notification if necessary. In this, the respondent was undaunted even by its own belief, which we have now concluded was erroneous, that under only the notification appointing him to hold the, "current charge of the duties of the post...", he could not validly function as the Licensing Officer because he was not substantively appointed to the Post of Director(F&VP). Under the circumstances, the intention of the respondent to confer, in one form or the other, the full powers of the Director (F&VP) on the petitioner, could not be more transparent.

We might add this anomaly in the appointment notification, appointing the petitioner as Licensing Officer was specifically pointed out by the petitioner during his arguments but counsel for the respondent has not addressed this aspect of the matter at all.

30. Counsel for the respondent further submits that there were three occasions, between 14th December, 1994 to 25th October, 1995, 4th October,1999 to 29th May, 2002 and between 15th September, 2003 to 23rd March, 2004, when the petitioner was not holding current duty charge and, therefore, it cannot be said that he has functioned continuously as Director (F&VP). A perusal of the records reveal that in the office order dated 14th December, 1994 the respondent

appointed Shri A.K. Paliwal, Deputy Director (F&VP), as Director (F & VP) on ad hoc basis. Against the said order, the petitioner filed an original application in the Tribunal which was allowed by quashing the impugned office order. It was also found that in another office order dated 4th October, 1999, the current charge of the petitioner as Director (F & VP) was terminated. The petitioner, thereafter, filed an application before the Tribunal against the said order, which was also allowed and the impugned order was quashed. The matter then went up to the High Court which upheld the decision of the Tribunal vide order dated 29th May, 2002. As far as the third period, i.e. the period between 15th September, 2003 to 23rd March, 2004, is concerned, the petitioner was under suspension. This was reviewed departmentally and he was reinstated. Therefore, this contention of the respondent has no force.

31. Counsel for the respondent has also contended that the claim of the petitioner is barred by limitation on the ground that although the notification appointing the petitioner to hold charge of the post in question was issued on 25th January, 1991, he has approached the Tribunal only in the year 2003. This has no force. It is settled law that the right of remuneration in terms of the correct salary to be computed on the basis of proper pay fixation, "subsists during the entire tenure of service and can be exercised at the time of each payment of the salary.....". It is only the recovery of arrears that can be limited to the period of three years from the date of filing the petition before the Tribunal. (See M.R.Gupta Vs. Union of India 1996 (5) SCC 628). When the petitioner moved the Tribunal in the year 1993, he was still in service and he had retired only on 31st July, 2007. In the instant case, therefore, the petitioner would be entitled to all arrears for three years before the date he filed the petition before the Tribunal, and thereafter.

32. Learned counsel for the respondent relies on a decision of this Court titled UOI v. D.P. Sharma, CWP No. 7751/2003 decided on 5th October, 2005. We are afraid this decision does not apply to the facts of this case, specially for the reason that in that case, Shri D.P.Sharma was working as a part time Member of the Tribunal; and since he was the senior most part time Member, he was asked to act as the Chairperson of the Tribunal after the post fell vacant. On the facts, the court concluded that this was a case which fell under clause (2) of FR 49 because the remuneration of the post in question was the same as that of the post to which the petitioner was appointed as a part time Member. Furthermore, it was made clear in the order granting him part time appointment that he would not be entitled for any remuneration for his appointment as a part time Member.

33. Respondent's counsel also relies on the case of Mohd. Swaleh vs. Union of India & Ors. in Civil Appeal No. 4412/1996 decided on 9th May, 1997. This case is clearly distinguishable from the present case as it was concerned only with delegation of powers. In that case, Mohd. Swaleh was appointed as Registrar by the Vice-Chairman of the Central Administrative Tribunal whereas the competent appointing authority was the President of India. On the other hand, in the

present case, the petitioner was appointed by the competent authority i.e. the President of India.

34. It is settled law that if a person is asked to discharge all the duties of a higher post, he is entitled to the pay scale of that higher post. The Supreme Court, in the case of Secy.-Cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, and further in the case of Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, , had enunciated this position. In paragraph 6 of Secy-cum-Chief Engineer (supra), the Supreme Court, while upholding the order of the Tribunal, observed that:

"The Tribunal was also justified in ordering payment of salary to the respondent for the post of Junior Engineer I with effect from 1990 when he was made to work on that post. It is true that the respondent, to begin with, was promoted in stop-gap arrangement as Junior Engineer I but that by itself would make no difference to his claim of salary for that post. If a person is put to officiate on a higher post with greater responsibilities, he is normally entitled to salary of that post. The Tribunal has noticed that the respondent has been working on the post of Junior Engineer I since 1990 and promotion for such a long period of time cannot be treated to be a stop-gap arrangement."

35. Further, in Selvaraj's case (supra), the appellant had worked on the higher post of Secretary (Scouts) pursuant to an order. The Supreme Court held that on the principle of quantum meruit the respondent authorities should have paid the appellant as per the emoluments available in the aforesaid higher pay scale during the time he actually worked on the said post of Secretary (Scouts) though in an officiating capacity and not as a regular promotee. To our mind, the circumstances of the case at hand also warrant relief to the petitioner under the principle of Quantum Meruit.

36. Again, in GNCT of Delhi v. B.S. Jarial and Anr. W.P. (C) No. 5742/2010, a Division Bench of the Delhi High Court observed that if an employee is directed to work on a higher post, he has no option but to work at the higher post at the dictates of the employer, as his not doing so would attract penalty proceedings against him. The Court, therefore, held that when a person is told to discharge the functions and duties of a higher post till the same is filled up and he works for years together, it would be unjust to deny him wages for the said post.

37. Again, in the case of Union of India (UOI) and Anr. Vs. Y.R. Mahajan WP(C) No. 20210/2005 decided on 1st February, 2008, the respondent was directed to hold the additional charge of Director General in addition to his own duties as Deputy Director General. The respondent, after his retirement, claimed emoluments and pensionary benefits for having performed higher duty of the post of Director General. A Division Bench of the Delhi High Court held that since the respondent was appointed with the approval of the Raksha Mantri, who was the competent authority, and he had discharged statutory functions apart from administrative and financial functions, "the decision of the Tribunal in granting

difference of the pay of the higher scale of the DGAQA for the period 2.9.2002 to 28.2.2003 would sub serve the ends of justice on a meaningful and purposive interpretation of Fundamental Rule 49 and the Government instructions referred to earlier."

38. In view of the facts and circumstances, the respondent, having taken the full work of Director (F & VP) for 16 1/2 years, under the garb of an order appointing him to hold the current charge of the duties of that post, from the petitioner, is clearly obliged to pay him the full monetary benefits of that post. Consequently, the impugned order passed by the Tribunal on 31st March, 2004 in O.A. No. 1800/2003 is set aside and the writ petition is allowed. The petitioner would be entitled to the same pay scale as applicable to the post of Director (F&VP) and the respondent is directed to pay the arrears to the petitioner for holding that post, calculated from three years before the date he filed the petition before the Tribunal. The arrears are to be calculated on the basis of the difference in his salary and emoluments between the substantive post of Joint Director (F&VP) held by the petitioner, and that of the Director (F&VP). The respondent shall also pay interest to the petitioner @ 8% per annum from the date the aforesaid arrears are to be reckoned up to the date of payment.

39. The petitioner shall also be entitled to costs of Rs. 20,000/-. All the amounts in terms of this judgment be paid by the respondent to the petitioner within four weeks from today.