
(2008) 02 DEL CK 0114
In the Delhi High Court
Case No : WP (C) No. 20210 of 2005

Union of India (UOI) and Another

APPELLANT

Vs

Y.R. Mahajan

RESPONDENT

Date of Decision : 01-02-2008

Acts Referred:

Citation : (2008) 02 DEL CK 0114

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : J.P. Sharma, for the Appellant; Party-in-person, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—Petitioners Union of India and the Director General, DGAQA, Ministry of defense, New Delhi, by this writ petition, assail the judgment dated 21.7.2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in OA No. 2916/2004. The Central Administrative Tribunal (hereinafter referred to as "The Tribunal"), by the impugned judgment, allowed the OA filed by the respondent Shri Y.R. Mahajan and directed the petitioners to pay to him the difference in the pay scale of the Director General, i.e. Rs. 22,400-24,500 and those paid to him as Deputy Director General in the pay scale of Rs. 18400-22400 for the period 2.9.2002 to 28.3.2003, within two months of the date of the judgment.

2. Union of India assails the said judgment questioning the entitlement of the respondent to receive the emoluments at the higher scale of the Director General of DGAQA contending that he was simply holding an additional charge to his own duties as a pro-tem measure and was thus not entitled to any additional emoluments.

3. Before considering in detail the grounds urged on behalf of the petitioners, the facts in brief may be noted.

(i) The respondent at the relevant time, was posted in Bangalore as Deputy Director General (DDG, South Zone) in the Director General Aeronautical Quality Assurance. Following the retirement of the Director General, Aeronautical Quality Assurance on 31.8.2002, he was directed to join in Delhi to hold the additional charge of Director General of DGAQA in addition to his own duties as Deputy Director General. In the event respondent retired on superannuation on 28.2.2003 while holding the charge of the post of Director General DGAQA.

(ii) The respondent after his retirement, submitted a representation to the Secretary, Department of Production and Supplies, for the grant of higher pay scale of Rs. 22,400-24,500 for holding the additional charge of DGAQA in addition to his duties as Dy. Director General w.e.f. 2.9.2002 to 28.2.2003. It may be noted that the proposal for holding a DPC for filling the post of Director General had been sent to UPSC on 2.12.2002. The UPSC vide its letter of 14.2.2003 intimated that as the respondent was retiring on 28.2.2003, holding of DPC would not serve any purpose. There was no other candidate eligible falling in the zone of consideration. Department was advised to fill up the post by method of deputation and separate process for the same to be forwarded.

(iii) As noted earlier, respondent filed OA No. 2916/2004 claiming emoluments and pensionary benefits having performed higher duty of the post of Director General w.e.f. 2.9.2002 to 28.2.2003. The Tribunal allowed the same by the impugned judgment.

4. Mr. J.P. Sharma, learned Counsel for the Union of India in assailing the judgment, submits that the respondent is not entitled to be paid emoluments at the higher scale of Rs. 22,400-24,500 as he was given the additional charge of DGAQA only as a pro-tem measure. Mr. Sharma places reliance of Fundamental Rule 49. He urges that in case of such appointments where the officer is discharging only administrative and financial functions, the officer would not be entitled to any additional remuneration. He contends that the respondent carried out only administrative and financial functions as is apparent from the appointment letter issued to him. The appointment letter dated 20.8.2002 is reproduced for facility of reference:

No. 49(16)/1/2002/D(HAL),

Government of India,

Ministry of defense,

Deptt. Of defense Production & Supplies

New Delhi, the 20th Aug., 2002.

Office Order No. 1/2002/D(HAL)

It has been decided with the approval of the competent authority to shift Shri Y.R. Mahajan to Delhi against the vacant post of DDG HQrs. Shri Mahajan may be asked to handover his charge as Deputy Director General, South Zone to the

senior most Director, DGAQA posted in Bangalore. On his assumption of charge as DDG HQrs., Shri Mahajan will also hold the additional charge of DG AQA in addition to his own duties w.e.f. 1.9.2002 as a pro-tem measure.

Sd/-

(V. Sethumadhavan)

Under Secretary to the Government of India

Director General AQA

5. Referring to the appointment letter, Mr. Sharma urges that it would be seen that performance of statutory functions were not made part of his job responsibilities. He submits that the respondent raised the claim for additional salary and consequent pensionary benefits only after he had superannuated. It was next urged that the appointment on DGAQA is required to be made after approval from the appointment Committee of the Cabinet. In the instant case, no such AGC approval was taken since the appointment was only a pro-tem measure. Further, he submitted that additional remuneration under FR 49 would be admissible only if the officer is appointed to the additional post with the approval of the competent authority, in the present case, the appointment Committee of the Cabinet. Mr. Sharma also sought to place reliance on the judgment of "Mohd. Swaleh v. Union of India and Ors." reported at 1997 (4) S L R 608 in urging that the sanction of Central Government for payment of the additional remuneration was necessary under Fundamental Rule 49.

6. Mr. Mahajan, who appears in person, submits that it is a matter of record that the Ministry of defense itself recommended the respondent's case for appointment in terms of Fundamental Rule 49. Further that the petitioner had in fact discharged statutory duties while holding charge as DGAQA. His appointment had been made with the approval of Raksha Mantri (defense Minister), who was the competent authority. Mr. Mahajan also submitted that the respondent had firstly maintained and averred in the OA that he had discharged statutory functions. Petitioner had not denied the same, rather admitted it by averring that it was a matter of record. Mr. Sharma submits that in writ proceedings failure to deny should not be strictly interpreted as admission. No adverse inference should be drawn. However, he candidly states that conduct of arbitration which is a statutory function, had been performed by the respondent as DGAQA.

7. Having noted the submissions of petitioner and respondent and perused the documents, let us consider whether the respondent is entitled to additional salary and consequential pensionary benefits under Fundamental Rule 49(i), which is reproduced below for facility of reference:

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 (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.

Reference may be invited to OM No. 4/2/89- Estt. (Pay-II), dated 11th August, 1989 which reads as under:

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 routine duties of another post irrespective of the duration of the additional charge. In practice it is observed that in 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 derived from acts of parliament such as Income Tax Act or the rules, Regulations, Bye Laws made under various articles of constitution such as FR's, CCS(CCA) Rules, CSR's 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 additional remuneration. The office order should also specify what duties he would be discharging or what duties he would not be discharging.

Reference may also be made to the following O.M. of the Government of India bearing No. F.7/14/61-Ests.(A) dated the 24th January, 1963 which reads as under:

(2) Officers performing current duties of a post cannot exercise statutory powers under the rules - The Law Ministry has advised that an officer appointed to perform the current duties of an appointment can exercise administrative or financial powers vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (i.e. Income Tax Act) or Rules, Regulations and By-Laws made under various Articles of the Constitution (e.g. Fundamental rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of financial Powers Rules, etc.)

8. It has been urged that in the instant case, the appointment of the respondent was with the approval of the Raksha Mantri. Further, that the respondent has performed statutory functions of DGAQA such as arbitration apart from other administrative and financial functions. Respondent even maintains that the proposal for his selection could not fructify on account of the paucity of time to hold the DPC. In these circumstances, especially when there is no denial also of the respondent having performed statutory functions and the current duty and financial responsibility of the higher post, it would be unfair to deprive him of this benefit simply because of the omission in the appointment letter authorizing him to perform statutory functions. Reference may be invited to the case of Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others, wherein it was held that one, who has been put to officiate as a stop gap arrangement on a higher post, is entitled to claim higher salary and any undertaking to deny him the benefit is contrary to law and against public policy.

9. As regards the reliance placed by the petitioner in "Mohd. Swaleh v. UOI" (supra), the said case was one where a Deputy Registrar of High Court was

sent on deputation in Central Administrative Tribunal as Deputy Registrar. The Vice-Chairman of the Tribunal passed an order conferring on the Deputy Registrar additional functions and powers of Registrar without any claim of pay for such posts. In the event, Deputy Registrar claimed additional remuneration for holding current/additional charge of the higher post of Registrar, the plea was rejected. It was held that in order to claim the pay of the post of Registrar, an order under Rule 28(3) of Central Administrative Tribunals Act alone was not sufficient. The Vice Chairman had no authority or power to grant financial sanction for the higher post. In the absence of any delegation of authority to the Chairman or the Vice Chairman of the Central Administrative Tribunal to appoint a Registrar, the additional remuneration could not be granted as claimed. The said case is clearly distinguishable as in the instant case, the authorization for the additional charge for the higher post is not in question. The respondent was appointed with the approval of the defense Minister. The Court also held on an interpretation of Rule 28(3) of the CAT (Procedure) Rules, 1987 that while as per the said Rule, the Chairman or Vice Chairman was competent to delegate the powers of the Registrar to the Deputy Registrar; but the Rule did not enable the Chairman to grant the pay of the Registrar.

10. In view of the foregoing discussion, we are of the view that respondent having been appointed with the approval of the Raksha Mantri and having 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 subserve the ends of justice on a meaningful and purposive interpretation of Fundamental Rule 49 and the Government instructions referred to earlier. It does not call for any interference in the exercise of writ jurisdiction.

Writ petition is accordingly dismissed.