
(2006) 07 KL CK 0047
In the High Court Of Kerala
Case No : O.P. No. 3551 of 2003

Union of India (UOI)

APPELLANT

Vs

Rajagopalan

RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Citation : (2006) 4 KLT 449

Hon'ble Judges : K.P. Balachandran, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : P.S. Sreedharan Pillai, S.C.G.S.C. and Jhon Varghese, Assistant Solicitor General, for the Appellant; K.M.V. Pandalai, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—Union of India is the Petitioner in all these three cases. Union of India is assailing the order of the Central Administrative Tribunal, whereby, the applicants before it have been allowed to draw charge allowances in terms of F.R. 49(iii).

2. It is contended by the Union of India that the order of the Tribunal is wrong and is not in consonance with F.R. 49, as there was no order posting any of the incumbents in full additional charge by the Central Government. A local arrangement made by a Zonal Head or Head of the Department may not be sufficient to cloth the respondents/incumbents with eligibility to claim full additional charge allowances, unless there is an order to that effect by the Central Government, the empowered authority in terms of F.R. 49. Delegation granted in terms of F.R.6 to make appropriate arrangements or posting on additional charge conferred on the Head of the Department enables him to make such arrangements only in respect of those officers, of whom he is the appointing authority. The applicants before the Tribunal, the first respondent in each of these cases, had been appointed in their respective cadre by the President of India. Necessarily, they are not entitled for the charge allowance which is directed to be paid as per the impugned order of the Tribunal, it is contended.

3. Supporting the order of the Tribunal, it is contended by the respective respondent that though the Central Government is mentioned as the appointing authority in Rule 49, in practice, it is done by the Head of the Department, as in their case. Such arrangement is being continued so long and the incumbents had been performing the duties in their original cadre post as well as in the charge post exercising the statutory powers. Such charge arrangement had been to post in different stations or different offices as well. In such circumstances, that being the practice hitherto followed, the charge allowances were being extended to similarly placed persons on several occasions. Therefore, there is nothing illegal in the order of the Tribunal in directing payment of the charge allowances, it is contended.

4. F.R. 49 is clear that "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". On such posting, the pay of the incumbent shall be fixed in the manner provided for in the Rules. This rule indicates that even in respect of a person holding a posting of which Central Government is not the appointing authority, the Central Government alone can put them in additional charge of another post. In other words, the charge arrangement can be made only by the Central Government and not anyone other than the Central Government.

5. Of course, going by F.R. 6, "the Central Government may delegate any of its officers, subject to any conditions which it may think fit to impose, any power conferred upon it by these rules"; subject to certain exceptions made in the said rule which did not cover Rule 49. Going by Item No. 20 in Appendix 3 to the Rules concerning the delegation in terms of Rule 6, it is clear that all Heads of Departments are given the power to appoint a Government servant to hold temporarily or to officiate in more than one post, and to fix the pay of subsidiary posts and the amount of compensatory allowances to be drawn in terms of Rule 49. But, this power is conferred on them "provided they have power to appoint Government servant permanently to each of the posts concerned;" i.e. the post held by the officer and the post already ordered to take charge.

6. Admittedly before us, the post the first respondent in each of these cases holds and the post to which they are asked to hold additional charge are posts of which the President of India is the appointing authority. Therefore, the delegation as contained in Item No. 20 of Appendix does not cover the post in question to enable them to draw charge allowances, as if they had been appointed on additional charge by the competent authority. The Tribunal below has not considered this aspect in its judgment, but was merely carried away by certain erroneous statements made on behalf of the Government of India. Necessarily, going by the said rules, the direction to pay charge allowances to the incumbents cannot be sustained. The Writ Petitions are therefore allowed, setting aside the impugned judgment of the Tribunal below.

7. But, at the same time, it is a fact that in exigencies of service, these

incumbents had been asked to perform additional duties in additional posts for which they were competent to officiate. It became necessary in the interest of the department to perform the duties statutorily enjoined on the posts to which they were additionally put in charge to function by their zonal head. In such circumstances, it was incumbent on the Head of the Department to take up the matter with the Central Government and to get approval of such action and regularise their charge arrangement, so that they shall not be denied the benefit arising out of such additional duties performed in the exigencies of situation. This is a matter, therefore, for the 3rd petitioner to take up with petitioners 1 and 2 for appropriate orders immediately.

Writ Petitions are allowed as above.