

(2010) 03 DEL CK 0201

In the Delhi High Court

Case No : Writ Petition (C.) No. 1842 of 2008 and C.M. No. 3543 of 2008

Union of India (UOI)

APPELLANT

Vs

Sushila Singh

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Citation : (2010) 03 DEL CK 0201

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : A.S. Datar, for the Appellant; V.K. Ojha and A.K. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

Mool Chand Garg, J.—The respondent was working as Enquiry-cum-Reservation Supervisor when the petitioner directed her to work as Chief Reservation Supervisor in place of an employee who reported sick on 07.11.1996. However, the respondent was not given the salary for the post of Chief Reservation Supervisor which is in the pay scale of Rs. 6500- 10500. The respondent approached the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") by filing O.A. No. 1710/2006 which was disposed of vide order dated 22.08.2006 when directions were given to petitioner to consider the Original Application filed by the respondent as a representation and to dispose of the same.

2. An order was passed by the petitioner rejecting the claim of the respondent as untenable. She again filed an O.A. No. 155 1/2007 which has been allowed by the Tribunal vide order dated 06.12.2007 directing payment of officiating allowance to the respondent from 07.11.1996 till the date of the passing of the order. It is this order which has been assailed before us by way of the present writ petition.

3. It has been submitted on behalf of the petitioner that the respondent, Mrs.

Sushila Singh as well as one Mr. Shiv Kumar Chadha were working under the administrative control of CCM/TT, IRCA when Mr. Shiv Kumar Chadha became sick & went on leave. Then, the respondent who was working as Enquiry-cum-Reservation Supervisor in the grade of Rs. 5500-9000 was directed to officiate as Chief Reservation Supervisor/Records in his place. The said post was in the pay scale of Rs. 6500-10500. Salary for the said post was not given to the respondent because the post of the Chief Reservation Supervisor in the grade of Rs. 6500-10500 was a selection post to have been filled up in accordance with the rules governing promotion of Group "C" staff contained in Chapter II of Indian Railway Establishment Manual (for short "IREM"), Volume-1. It was also pleaded that the claim of the respondent was also stale as she filed her application bearing O.A. No. 17 10 only in 2006, i.e., almost after 10 years.

4. It has been submitted that the said O.A. was considered as a representation in terms of the order passed by the Tribunal dated 22.08.2006 but the same was not allowed because the claim of the respondent for officiating allowance was untenable as the post of CRS/Record and other posts of CE&RS are not pinpointed from seat to seat and the post on which she had worked was not pinpointed for the higher grade.

5. The Tribunal after taking into consideration the reply filed on behalf of the petitioner and relying upon FR-49 held that in accordance with the said FR which is also comparable to an equivalent rules in Railways, one, who has been authorized to function by a formal order and has discharged the duties of a higher post, is liable for higher pay scale on functioning, as difference of salary is liable to be given to that person. Reference has been made to a judgment delivered in the case of Selvaraj Vs. Lt. Governor of Island, Port Blair and Others, wherein it was held that such a person was entitled to difference of salary. A similar view was also taken by a bench of the Tribunal in O.A. No. 989/2006 titled as Kishan Kumar and Ors. v. NCT of Delhi and Anr., which was upheld by this Court. The relevant observation made in Kishan Kumar's case (supra) have been quoted by the Tribunal which we also refer for the sake of reference in this case as under:

8. Shri Yogesh Sharma, learned Counsel drew my attention to various orders issued vide which applicants were required to hold additional charge of various posts of higher nature in addition to duties performed of the posts holding by them on substantive basis. DoP&T OM dated 11.8.1989 laid down the guidelines while giving any additional charge of another post and required the authorities to process the case for getting the approval of Competent Authority for passing formal orders for appointing for additional posts. On appointment, officers were made entitled to additional remuneration as indicated in FR 49. It is only when an officer is required only to attend usually day to day functions of non statutory nature attached to the post, additional remuneration was made inapplicable. Shri Yogesh Sharma, learned Counsel rightly pointed out that orders issued from time to time asking applicants to take additional charge of another post did not specify

that they were required to perform only routine day to day duties of non statutory nature. It is seen from orders that applicants were not only allowed to hold additional charge of another one post but even additional charge of numerous posts had been conferred on them. It is not denied that pay scale of Rs. 10,000- 15,200/- is available to promotional post, to which applicants are eligible. In Selvaraj (supra), Hon''ble Supreme Court based on principle of "quantum meruit" allowed higher pay scale during the time the official "actually worked" on higher post though not as a regular promotee. Similarly, in para- 11 of judgment reported in Jatinder Mohan Singh (supra), Division Bench allowed additional remuneration attached to higher post under FR 49. It also noticed its earlier judgment dated 18.5.1998 in OA No. 1350/1996 Dr. P.N. Bahl v. Union of India. In said case Dr. Bahl was working as Additional Director General in ICAR and was asked to look after the work of DDG in addition to his own duties without any extra remuneration. This Tribunal directed the respondents to allow the additional remuneration to Dr. Bahl under FR 49(1), which order had been confirmed by the Hon''ble Delhi High Court in Civil Writ Petition No. 3202/1998 decided on 0 1.2.2000. It is undisputed fact that one becomes entitled to promotion on completion of five years" service in pay scale of Rs. 6,500-10,500/- and applicants had satisfied such requirement. The only plea raised by respondents that concerned order specifically laid down that applicants would not be entitled to extra remuneration under FR 49. In given circumstances particularly of law laid down in Selvaraj (supra) & other judgment, which hold field, & particularly when it is admitted by respondents that additional charge of post carrying higher pay scale, I do not find any justification in respondents" contention/plea.

6. There is no dispute that the applicant was later on promoted to the same post and had been performing the functions of the higher post. It was held that on account of the doctrine of "equal pay for equal work" that once the respondent had carried out the functions for the said post for such a long time, she was entitled to the pay and allowances. Moreover, liberty was granted to the petitioner to consider the Original Application as a representation. The said representation having been rejected without cogent reasons, the plea of the petitioner in refusing to grant such allowance to the respondent was rightly held to be improper.

7. It would be appropriate to take note 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:

(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 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;

8. In view of the aforesaid, the petitioner who had been officiating as Chief Reservation Supervisor/Records right from 07.11.1996 till when she was appointed as Chief Reservation Supervisor/Records regularly, was entitled to the pay of the post at which she was working in this period inasmuch as there is nothing on record to show that she was ineligible for the post at which she was working during period of officiation. As such, the order passed by the Tribunal directing the petitioner to pay arrears of difference of pay and allowances for the post of Chief Reservation Supervisor since when she was appointed on the said post regularly does not suffer from any infirmity calling for any interference from this Court in the facts and circumstances of the case.

9. As regards the delay which point has been raised before us even by the petitioner in this writ petition also, it is sufficient to say that once an order was passed against the petitioner in an Original Application in 2006 and has been disposed of with a direction to the petitioner to treat that application as a representation, the plea of limitation is unsustainable in law. Accordingly, the writ petition is dismissed, of course, with no orders as to costs.

10. All the pending applications are also disposed of.