

PETITIONER:
MOHD. SWALEH

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 09/05/1997

BENCH:
S.B. MAJMUDAR, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M. JAGANNADHA RAO, J.

The appellant has filed this appeal against the order of the Central Administrative Tribunal, Jodhpur Bench Jodhpur dated 4.5.1995 dismissing O.A. No. 342 of 1994 rejecting the appellant's claim for additional remuneration for holding current/additional of a higher post.

The appellant was working as Deputy Registrar (Admn.) in the High Court of Rajasthan. On 9.3.1988, the Chairman, Central Administrative Tribunal appointed the appellant as Deputy Registrar, on deputation in the scale of Rs. 3000-100-3500-125-4500 initially for a period of one year. Appellant was relieved in the High Court and he joined in the new post on deputation on 29.4.1988.

By an order dated 29.4.1988, the Vice-Chairman of the Tribunal, in exercise of his powers under Rule 13 of the Delegation of Financial Power Rules, 1978 and as Head of Department, declared the appellant Deputy Registrar as Head of the Office of the Central Administrative Tribunal at Jodhpur and directed that he will exercise power to incur recurring and non-recurring contingent expenditure to the extent of Rs. 500/- for maintenance, upkeeping, repair of staff cars and miscellaneous expenditure. It was also stated in that order that the above delegation of power would be subject to the observance of usual economy instructions, provision of rules and regulations and availability of funds.

By another order dated 5.5.1988, the Vice-Chairman permitted the appellant to exercise all the powers and functions of Registrar as envisaged by Rule 28(3) of the Central Administrative Tribunal (Procedure) Rules, 1987. This order was passed because the post of Registrar of the Tribunal at Jodhpur, at that time, was vacant.

On 30.8.1990 appellant made a representation for payment of additional remuneration for discharging the duties of the post of Registrar. Meanwhile, the appellant's deputation was being extended from time to time. The appellant made a further representation dated 15.3.1991 for additional remuneration. By an order dated 20.11.1991, his request was rejected by the principal Bench of the Central

Administrative Tribunal Delhi stating as follows:-

"In this connection, attention is invited to F.R. 49 where it has been specifically mentioned that a person can be paid remuneration of a higher post only if he is formally appointed to the post with the order of the Competent Authority. A section Officer of Deputy Registrar directed to hold the current charge of the post of Deputy Registrar/Joint Registrar/Registrar is not entitled to additional pay as Appointing Authority for all group A posts is the President of India."

It was also stated in that order that merely because under Rule 28(3) of the Central Administrative (Procedure)/Rules, certain powers and functions of the Registrar has been delegated to the appellant on 5.5.1988 by the Chairman/Vice Chairman, did not help and could not be construed as a formal appointment to the post as envisaged by F.R. 49.

In other words, the Principal Bench, Delhi, on the administrative side, rejected the claim of the appellant on the ground that though the appellant was directed by order of the Vice-Chairman dated 4.4.1988 to exercise all power and functions of the Registrar as per Rule 28(3) of the Central Administrative Tribunal (Procedure) Rules, 1987, that was not sufficient for purposes of Rule 49 of the F.R. for allowing additional remuneration to the appellant.

When the appellant moved the Central Administrative Tribunal, Jodhpur on the Judicial Side by filing O.A. No.342/1994 the said Jodhpur Tribunal by order dated 4.5.1995 rejected the O.A. and upheld the order dated 20.12.1991 passed by the Central Administrative Tribunal, Principal Bench, on the administrative side.

It is against this order dated 4.5.1995 passed on the Judicial Side by the Tribunal Jodhpur that the appellant has preferred this appeal.

In this appeal, we have heard the learned senior counsel for the appellant Shri Rajinder Sachar and the learned counsel for the Union of India, Ms. Shashi Kiran.

It is true that the appellant who was on deputation in the Central Administrative Tribunal Jodhpur as Deputy registrar was conferred certain additional powers and functions under the orders passed by the Vice Chairman of the Tribunal, as stated above, one under, Rule 13 of the Delegation of Financial Power Rule 1976 and another under Rule 28(3) of the Central Administrative Tribunal (Procedure) Rules, 1987. The rejection of the appellant's request for additional remuneration for discharging the duties of the Registrar was, however based upon the language and term of Rule 49 of the Fundamental Rules.

Now Delegation of Financial Power Rules, 1978 do not contain any provision for payment of additional remuneration for performing the function of a higher post. Similarly, the Central Administrative Tribunal (Procedure) Rule, 1987 which permit the Chairman/Vice-Chairman of the Central Administrative Tribunal to delegate to the Deputy Registrar, any of the power and functions of the Registrar, any of the powers and functions of the Registrar, do not also contain any provision for payment of additional remuneration. The only relevant provision in that behalf referred to by counsel on both sides is Rule 49 of the Fundamental Rules,

it was in fact this Rule that was referred to by the Principal Bench of the Tribunal at Delhi while rejecting the claim of the appellant for additional remuneration. We shall therefore set out the relevant part of Rule 40 of the Fundamental Rules. It read as follows:-

"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 case, his pay is regulated as follows:-

(1) 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/time 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).....
(iii).....
(iv).....
(v).....
(vi).....

A reading of Fundamental Rules 49 makes it clear that the Central Government can appoint a government servant to "officiate" in another post and in such a case where he 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/time of promotion - in addition to this ordinary duties - he shall be allowed pay admissible to him, as if he is appointed to officiate in the higher post. Under sub-clause (1) of Rule 49, it is therefore, for the Central Government to appoint a government servant already holding a post to officiate in another independent post and when he is formally appointed to hold full charge of the duties of the higher post in the same office as his own and in the same centre/line of promotion (here, the Registrar) only then he shall be allowed the pay admissible to him, as if he was appointed to officiate in the higher post in the present case, there is no order of the Central government appointing the appellant in an officiating capacity in the higher post. Therefore, in terms. Rule 49 of the F.R. is not satisfied.

It is however argued for the appellant that the order of the Vice-Chairman of the Jodhpur Bench of the Tribunal permitting the appellant under Rule 28(3) of the Central Administrative Tribunal (Procedure) Rule **** is sufficient for the purposes of Rule 49 of the Fundamental Rules.

In order to appreciate this contention, it is necessary to find out whether the Vice-Chairman could without the sanction of the Central Government, have passed an order conferring the powers and functions of the Registrar so as to enable the Deputy Registrar to claim the pay admissible to the post of Registrar, Now Rule 28(3) reads as follows:

"Rule 28(3) : In the absence of the Registrar, the Deputy Registrar or any other officer to whom the powers and functions of the registrar are delegated by the Chairman or Vice-Chairman, as the case may be, may exercise the powers and functions of the Registrar."

Under Rule 28(3), for the purposes of discharging the power and functions of the Registrar, an order of the Chairman or Vice-Chairman, would no doubt be sufficient.

But, in order to claim the pay of the post of the Registrar an order under rule 28(3) of the aforesaid rule alone is not in our opinion sufficient. The right to claim the pay is squarely governed by Rule 49 of the Fundamental Rules.

We have stated that there is no order of the Central Government passed under Rule 49 in favour of the appellant. The next question is whether the Central Government has delegated the power under Rule 49 to the Chairman/Vice-Chairman of the Central Administrative Tribunal. If, however it is established that the powers of the Central Government under Rule 49 are delegated to the Chairman or Vice-Chairman, the of course, the Deputy Registrar upon whom the powers and functions of the Registrar are conferred can certainly claim the pay of the Registrar.

We shall, therefore, examine whether the power of the Central Government under F.R. 49 have been delegated to the Chairman/Vice-chairman of the Central Administrative Tribunal. Under F.R. 9. the Central Government can delegate to any of its officers, subject to any conditions which it may think fit to impose, any power conferred upon it by the Fundamental Rules except the powers relating to (a) making rules (b) powers conferred by Rule 8 9(a) (b), 44, 45A to 45C, 83, 108A, 119, 121 and 127 (c) and by the first proviso to clause (1) of Rule 30. It is clear that Rule 49 power of the Central Government can be delegated, if need be, Appendix 3 to the Fundamental Rules contains a table of various delegations made under F.R.6. item 20 of this Table does show that the power of the Central Government under Rule 49 has been delegated to "All Head of Departments" but column (5) of the Table which deals with the extent of power delegated imposes certain conditions, it says:

"Full power, provided that they have power to appoint Government servant permanently to each of the post concerned."

In other words, assuming that the Chairman of the Principal Bench of the Central Administrative Tribunal of the Vice-Chairman of the Benches are "Heads of Department", the power of the Central Government under Rule 49 are exercisable by them as per the above delegation in Appendix 3 to the F.R. provided that such Head of Departments have the power to appoint the concerned government servant to the higher post in the facts of this case, therefore, if it is established that the Chairman/Vice-Chairman can appoint the Registrar of the Bench at Jodhpur, then when the said Chairman/Vice-Chairman orders that the Deputy Registrar will exercise the power and functions of the Registrar the pay attributable to the post of Registrar can be claimed by the Deputy Registrar.

The next question therefore is whether the Chairman/Vice-Chairman are the appointing authorities for the post of Registrar of the Bench of the Tribunal. We

shall, therefore refer to the relevant rules in this behalf.

Now, under the Central Administrative Tribunal (Group A posts) Recruitment Rules, ****, the posts of the Registrar (Principal Bench) in the scale of Rs.6000 - 6700, Registrar (other Benches) in the scale of Rs. 4000 - 4700, Joint Registrar in the scale of Rs. 4700 - 5000 and Deputy Registrar in the scale of Rs. **** - **** are Group A posts.

Under the Central Civil Service (Classification, Control and Appeal Rules), 1965, Rule * states that the Civil Service under Union shall be classified as Class A, B, C, and D post. Under Rule 6a the word (group) has to be substituted for the word 'class' wherever the word 'class' occurs. The appointments to Class I (i.e. group A) service and posts are to be made by the President of India as per Rule 8 of the ***** Rules. The proviso to Rule 8, however says that the President may be a general or special in such order delegate to any other authority the power to make such appointment so far class II, III, IV (i.e. group B, C, D) are concerned. Rule 9 states that the appointing authorities are specified in the schedule to CCA Rule, 1985. In other words, the power of the President to appoint persons to Group B, C, D posts has been delegated but not the power to appoint to Group A posts. We have stated that the post of Registrar, Joint Registrar and Deputy Registrar are group A posts.

No order of the President of India delegating his authority to the Chairman or Vice-Chairman of the Central Administrative Tribunal, in respect of appointment to the post of Registrar has been brought to our notice. (As shown below, there is now an order of delegation so far as the post of Deputy Registrar is concerned).

Once it is held that the Chairman and Vice-chairman of the Central Administrative Tribunal are not the appointing authorities for the post of Registrar of a Bench of the Central Administrative Tribunal by virtue of any delegation, it must follow that the condition laid down by the Central Government while delegating powers under Rule 49 of the Fundamental Rules to the Head of the Department (vide column 9 of Appendix *, it **) has not been satisfied. The said condition would have been satisfied if the Chairman of the Vice-chairman of the Central Administrative Tribunal has been delegated the power to make appointments to the post of Registrar of a Bench of the Tribunal. If there had been such a delegation of power to the Chairman or Vice-Chairman then the latter could confer additional duties and power attributable to the post of Registrar, to the Deputy Registrar for purposes of Rule 49 of the F.R. as well and in that event, the pay of the post of Registrar could be paid to the Deputy Registrars entrusted with higher powers and duties of a Registrar. We are therefore, of the view that though under Rule *** of the Administrative Tribunal (Procedure) Rules 1987 the Chairman or the Vice-chairman are authorised to delegate the powers and functions of the Registrar to the Deputy Registrar still in the absence of the power of delegation by the Central Government for the purpose of Rule 49 of the Fundamental Rules, the appellant who as Deputy Registrar exercised the powers and functions of the Registrar, could not be granted the pay attributable to the post of the Registrar.

In fact, this position has been clarified by letters of the Central Government. The letter dated 5th December, 1985 addressed by the Department of Personnel Administrative Reform, Government of India to this Chairman Central Administrative Tribunal would clearly show that the Group 'A' post in the Tribunal shall be filled by the Chairman of

the Central Administrative Tribunal only after a reference to the department i.e. Department of Personnel and Administrative Reforms for obtaining appropriate orders. By the letter dated 21st May, 1997 of the Government of India in No.A-12018/5/85-CAT, the Central Government has delegated to the Chairman of the Central Administrative Tribunal the power to make appointment to the post of Deputy Registrar in the Central Administrative Tribunal on deputation basis subject to the Government's Rules and instructions on the subject. The above two letter therefore, would make it very clear that the appointments to group 'A' posts (other than Deputy Registrar) could be made by the Chairman Central Administrative Tribunal only after a reference thereof to the Central Government. So far as the post of Deputy Registrar among group 'A' posts are concerned, that power of appointment to the post of Deputy Registrar has been delegated to the Chairman of the Central Administrative Tribunal.

For the aforesaid reasons we are of the view that the condition mentioned in Appendix 3 to the F.R. wherein the Central government has delegated powers under Rule 49 to the Head of the Department namely that the Head of the Department must have been authorised to make appointment to the higher post, is not satisfied in the facts of this case inasmuch as the power to appoint a Registrar has not separately been delegated to the Chairman or Vice-chairman of the Central Administrative Tribunal. Hence the Additional remuneration cannot be granted as claimed.

Learned counsel for the appellant made a submission that the principle of quantum ***** would apply to the facts of the case and relied upon the decision of the Supreme Court in State of West Bengal Vs. B.K. Mondal & Sons [AIR 1962 SC 779]. In that case it was held that though the contract for certain work was not executed as per the provision of Section 175(3) of the Government of India Act still compensation could be paid under Section 70 of the Contract Act. In our view the said decision which is based on Section 70 of the Contract Act is not applicable to the present situation where the field is governed by specific statutory rules namely Rule 40 of the Fundamental Rules.

We are, therefore in agreement with the judgment rendered by the Central Administrative Tribunal on the judicial side on 4.5.1995 which has affirmed the order of the Chairman, Principal Bench, of the Central Administrative Tribunal dated 20.3.1991 passed on the administrative side.

The result is rather unfortunate but in view of the rule position set out above, we have no choice but to dismiss this appeal. The appeal is dismissed but in the circumstance there will be no order as to costs.