

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

Top Sheet

No. OA 784 of 2010

Present: Hon'ble Mr. Shankar Prasad, Administrative Member  
Hon'ble Mr. G. Shanthappa, Judicial Member

RAJARSHI DASGUPTA & ORS.

VS

UNION OF INDIA & ORS.

For the applicants : Mr. S.K. Dutta, counsel

For the respondents : Ms. U. Sanyal, counsel

Heard on : 28.2.2011

Order on : 23/12/11

O R D E R

Mr. Shankar Prasad, A.M.

The five applicants of these OAs are working as Additional Commissioners under the respondents and are aggrieved by the action of the respondents in not considering their claim for additional remuneration/allowance under FR 49(iii)/ rejection of the claim of applicant No.1 in this regard. The same reads as under:

"The application for additional remuneration under FR 49(iii) has been examined by the CCIT and on the basis of the same, the prayer/claim for the additional allowance/ remuneration has not been found to be acceptable. The applicant's prayer is rejected. Inform him accordingly."

2. They seek quashing of this order and grant of benefits.
2. ~~The facts lie in a narrow compass~~
- a) The case of these applicants in brief is that they are holding independent charges of other offices/Ranges in addition to their substantive posting. (These details are on record.) They have brought on record (a) Relevant extract of Manual of Office Procedure (Publisher, Directorate of Inspection, 2003). Attention is drawn to para 18 regarding the functions of Additional/Joint Commissioner of Income Tax (Range). Para 18.1 provides that they may be required to formulate assessments in revenue yielding and complex cases. Para 18.2 provides that they exercise amongst others statutory functions and judicial functions (b) orders regarding jurisdictions (c) Manual of Office Procedure (Technical). It is stated that they submitted representations for grant of additional

remuneration as per FR 49(iii) read with DOPT OM dt. 11.8.89. The case of applicant No.1 has been rejected in a cryptic manner, while the decision in respect of four others is yet to be communicated.

b) Rejoinder is filed. It is submitted with reference to para 8 of the reply that the word 'or' in FR 49(iii) is disjunctive and that they have held separate and distinct jurisdictions. With reference to para 9 of the reply it is submitted that applicants cannot be made to suffer on account of laches on the part of the respondents. In subsequent orders the duties were specifically mentioned. A copy of the order dt. 13/25.11.09 assigning certain cases to J.C.I.T. of Range 20, 23 & 24 have been brought on record. (The CIT, Kol VIII), has issued this order in view of the powers conferred upon him by CBDT in exercise of 120(4)(b) of I.T. Act.) **The statements made in para 13 are denied and respondents put to proof.**

3. It is accepted in para 5(a) of reply that in view of shortage of officers they had been assigned additional charges of different ranges. It is stated in para 8 of reply that the applicants are holding additional charge of other posts which are in the same cadre/line of promotion. It is submitted in para 9 that GOI instruction 2 & 3 quoted below FR 49 provide that duties and functions of the post have to be defined in the order. These were not indicated in the orders in respect of these applicants. It is submitted in para 13 that as senior officers they can neither expect any extra remuneration nor any extra recognition for their statutory work, which is not optional. Their claim for additional remuneration amounts to intellectual dishonesty. It was ensured that additional charges were in the same building.

4. We have heard the learned counsel.

5. Fundamental Rule 49 contains provisions regarding combination of appointments. Sub Rule (i) contains provisions when one holds charge of higher post in same office and in the same cadre/line of promotion in addition to ordinary duties. Sub Clause (ii) considers the situation when dual charges of two posts in the same cadre in same office are held. No <sup>additional</sup> admissible pay is payable, but if one of them carries special pay the same will be paid. Sub Rule (iii) applies to a situation which are not in the same office or if not



in the same office is or are not in the same line of promotion; he shall be allowed pay of higher/highest post plus 10% of presumptive pay of additional posts, if additional charge is beyond 45 days. Concurrence of DOPT has to be obtained for payment beyond 3 months. Sub Rule (iv) considers the situation when an officer is appointed to hold full additional charge of another post. The aggregate of pay and additional pay is not to exceed Rs.26,000/- (from 12.3.99). No additional pay is payable for holding current charge of routine duties.

6(a) MHA OM 7/14/Estt (A) dt. 24.1.63 quoted below Serial 3 under FR 49 is as under:

"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 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, e.g., 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."

b) Relevant part of DOPT OM dt 11.8.89 is as under :

"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 Act 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, CSRs, DFPRs, 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 officer order should also specify what duties he would be discharging or what duties he would not be discharging."

7. The applicants have also brought on record the Manual of Office Procedure (Technical) regarding duties and responsibilities of Additional/Joint CIT in charge of a Range. They have also brought on record the order constituting the ranges and the orders placing them in additional charges. *As*

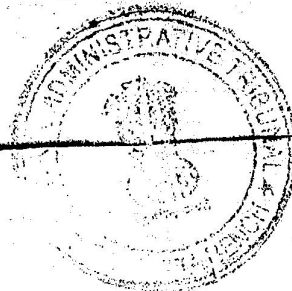


8. The crucial question is as to whether these applicants had been given only current charge of additional posts or they have been entrusted with statutory functions. If they have been entrusted with statutory functions then the same is inconsistent with the argument of their holding current charge. The respondents have accepted that these applicants <sup>were in</sup> ~~have been~~ charges of Ranges. Range is admittedly a unit of tax administration.

9. If one is holding charge of another statutory post, the question of their being located in another building does not arise. It is true that the Rules require that concurrence of DOPT has to be obtained if period exceeds three months in cases governed by sub rule (iii). Such a situation might have come about on account of mismatch between availability of officers and posts. The respondents have not said anything about it. Obtaining prior approval is the responsibility of administration.

10. When we apply the law laid down in FR 49 and the GOI instructions to the facts of this case it is evident that orders of respondents cannot be sustained. We are fortified in this view by the decision of Madras Bench in OA 718/00 (B.V.Bhaskar, Additional Commissioner of Income Tax -vs- UOI).

11. The impugned orders are quashed and set aside. The respondents are directed to reconsider the case of applicants in the light of law as explained above. This exercise be completed within three months of receipt of order and the arrears, paid within one month thereafter failing which interest at 8% will be payable beyond that period to the date of actual payment. No order as to costs.



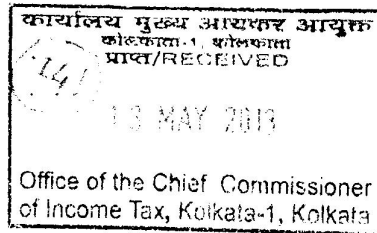
MEMBER (J)

in.

Certified to be true copy  
সত্যকপি প্রমাণিত

10/4/07  
Court Officer  
Central Administrative Tribunal  
Calcutta Bench

MEMBER (A) 23/12/11  
29  
MR. S.K. Dutta  
28/12/11  
for m (6)  
free  
4/1/12  
04/1/2012  
N. D. S.  
04/01/12



**F.No. C-18011(S)/19/2013-SO(V&L)**

Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes  
CBDT, North Block, New Delhi

**COURT MATTER**  
**MOST URGENT**

Dated : 08.05.2013

To

The Chief Commissioner of Income Tax (CCA)  
Kolkata.

**Sub : Grant of additional pay as FR 49(iii) for holding additional charges, exceeding three months – reg.**

Sir/Madam,

I am directed to refer to your letter No. 9242/SE/90/2005-06/Corr/Pt.IV dated 18.03.2013 and to say that the case be examined in accordance with the advice tendered by DoPT vide Deptt of Personnel & Training U.O. No. 4/1/2012-Estt (Pay II) dated 7<sup>th</sup> June, 2012 in the case of Shri Rajarshi Dasgupta and a decision taken accordingly. The DoPT vide their aforesaid note dated 07.06.2012 had advised as under:-

*"... it is of the opinion that each office of a Commissioner called a circle is a separate entity and are to be treated as separate offices. As such in the instant case, Shri Rajarshi Dasputa is entitled to additional remuneration for holding additional charge of other post(s) under FR 49(iii)."*

Yours faithfully,

*Ratan Kumar Sharma*  
(R.K. Sharma)

Under Secretary to the Govt. of  
India, (V&L)-II, CBDT, New Delhi  
(Tel. No. 011-23093526)

CIT. Siliguri

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX, KOL-I, KOLKATA  
P-7, CHOWRINGHEE SQUARE, AAYAKAR BHAWAN, KOLKATA-69

F. No. A/c. 2203 / CCIT  
5E/90/2005-06/Corrs.Pt.IV

Dated: 03-09-201

**OFFICE CIRCULAR**

In O.A. No. 784 of 2010( Rajarshi Dasgupta & Others Vs. Union of India & others) filed before the Hon'ble CAT, Calcutta Bench in the matter of payment of additional remuneration under FR49(iii) for holding additional charges of other post(s), the Hon'ble CAT, Calcutta Bench has directed the respondent, i.e., Union of India, to pay the arrears of additional pay to the appellants as per the provision contained in FR 49(iii), as holding a charge of a unit of tax administration amounts to entrusting the officer with statutory functions.

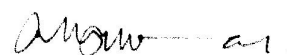
In this context, CBDT vide its letter No. C-18011(S)/19/2013-SO (V & I.) dated 08.05.2013 has directed to examine each claim under FR 49(iii) in accordance with the advice tendered by the DOPT vide Deptt of Personnel & Training U.O. No. 4/1/2012-Estt(Pay II) dated 7<sup>th</sup> June, 2012 in the case of Shri Rajarshi Dasgupta and a decision be taken accordingly. The DOPT vide their aforesaid note dated 07.06.2012 had advised as under:-

*"... it is of the opinion that each office of a Commissioner called a circle is a separate entity and are to be treated as separate offices. As such in the instant case, Shri Rajarshi Dasgupta is entitled for holding additional charge of other post(s) under FR49(iii)."*

In view of the above fact and circumstances, claims of officers claiming additional remuneration as per provision contained in FR 49(iii) may be examined in accordance with the advice tendered by the DOPT mentioned above and a decision taken accordingly.

Furthermore, claims of those officers, who have already retired from service, are to be settled by the Heads of the Departments under whom he/she was posted immediately before his retirement from service.

This issues with the approval of the CCIT(CCA), Kolkata.



(RAJAT SUBHIRA BISWAS)  
Addl. Commissioner of Income Tax, Hqrs(Admn)-I  
For Chief Commissioner of Income Tax, Kol-I, Kolkata