



**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 3884/2017

Today this the 09th day of December, 2020

Through video conferencing

**Hon'ble Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)**

Mr. Prem Chand Tomar
S/o Late Sh. Tota Ram
R/o B-203, Maurya Apartment
95 I.P. Extension, Delhi
Aged about 73 years
Director (Horticulture) Retd.
Group B.

...Applicant

(Ms. Jasvinder Kaur, Advocate)

Versus

1. North Delhi Municipal Corporation
Through Commissioner (North)
Dr. SPM Civic Centre, JLN Marg, New Delhi-110002.
2. North Delhi Municipal Corporation through
Central Establishment Department
13th Floor, Dr. SPM Civic Centre
JLN Marg, New Delhi-110002. ..Respondents

(Sh. R.V. Sinha, Advocate)

Order (Oral)



Mr. A.K. Bishnoi, Member (A)

The facts of the case as emerging from the pleadings are as follows:

(i) The applicant joined the service of the respondent organization, Municipal Corporation of Delhi (MCD) as (Garden) Overseer on 16.01.1962. He was promoted to the post of Assistant Director (Horticulture) and thereafter, on 27.08.1986, to the post of Deputy Director (Horticulture) and retired from the service on 30.11.2003 on attaining the age of superannuation. He was due for promotion to the post of Director (Horticulture) in the year 1993. However, he was placed under suspension vide order dated 23.08.1993. The DPC for promotion to the post of Director (Horticulture) met on 16.09.1993 and his case was kept in sealed cover. The applicant was reinstated in service w.e.f 06.02.1998 on being exonerated in the departmental inquiry but the sealed cover was not opened as another RDA case was pending against him as also a police case. However, he was given the look after charge of Director (Horticulture) vide order dated



20.02.1998 (Annexure A/4).He was earlier given the look after charge of Director (Horticulture) vide order dated 31.12.1991.

(ii) On conclusion of the pending RDA case a penalty of 10% cut in pension for two years was imposed on the applicant on 21.08.2007 which was quashed by this Tribunal in TA No. 96/2009 vide order dated 01.06.2009.He was also exonerated in the police case on 05.08.2013.

(iii) Consequently, the sealed cover was opened and he was given promotion to the post of Director (Horticulture) w.e.f 29.09.1993on notional basis (Annexure A/1). He was allowed fixation of pension on the basis of his notional promotion and also the consequent arrears of pension. The applicant represented for payment of arrears for the period he worked as Director (Horticulture) which was rejected on 10.07.2017 (Annexure A/2) and the applicant was so informed. In the present OA the applicant has sought relief in the form of quashing the order dated16.11.2016 (Annexure A/1) and order dated 10.07.2017 (Annexure A/2), to the extent it relates to the denial of release the arrears of pay and



allowances on notional promotion, with direction to release the same along with all monetary benefits with penal interest.

2. Counter reply has been filed as also a rejoinder.
3. We have heard Ms. Jasvinder Kaur, learned counsel for the applicant and Sh. R.V. Sinha, learned counsel for the respondents.
4. Ms. Jasvinder Kaur, learned counsel for the applicant further elaborated and explained at length the contentions put forward in the pleadings. In short, it amounted to the proposition that the applicant having being promoted, though notionally and also having worked as Director (Horticulture), even as a look after charge, is entitled to the entire package of compensation that would have been available to him if he had worked on the same post in the regular substantive capacity.
5. Sh. R.V. Sinha, learned counsel for the respondents on the other hand contends that the applicant has already got notional pay fixation from the date from which it became due and in this context reference is also being made to the OM dated 25.01.2016 of the DoP&T which relates to the cases of Government Servants exonerated after retirement. In effect it



states that there being so many permutations and combinations to the situations that may arise, a decision in such cases should best be left to the discretion of the concerned administrative authorities. It is further contended that the order dated 31.12.1991 through which the applicant was initially asked to hold the post of Director (Horticulture) in look after capacity itself mentioned that he will not be paid any remuneration for the additional work. Thus he cannot be paid the salary for a higher post while he was substantively working on a lower post as he has not substantively performed the duty of the higher post.

6. The issue for adjudication has two aspects. The primary one is whether the fact that the applicant has been exonerated would entitle him to get the higher remuneration with consequent arrears from the date of his notional promotion, and, in addition to this is, what effect, if any, would the fact that he was holding the post of Director (Horticulture) on a look after basis have on the point of grant of remuneration for the above mentioned post from the date he held the post as a look after charge.



7. We have closely examined the pleadings and documents on record and have also duly taken into account the arguments put forward by the respective learned counsel for the parties.

8. As regards the first amongst the abovementioned points for adjudication as has been stated in the OM of 25.01.2016 much would depend on the facts and circumstances of the case and there is no clear cut formula for determining what should be the decision in a particular case. We are not fully conversant with the features of the case on account of which sealed cover proceedings were resorted to nor are we aware of the nature of the exoneration. To add, we are not expected to sit in judgement on how the competent authority comes to a particular conclusion in a particular case for there are both limits and limitations to how far judicial scrutiny can be done on executive actions. Suffice it to say that on the face of record we find nothing unlawful in the decision of the competent authority not to grant any additional remuneration as would be applicable for the higher post of Director (Horticulture) on the basis of notional promotion.



9. On the point regarding the effect of holding the post of Director (Horticulture) on a look after basis for grant of remuneration as fixed for the higher post we proceed to examine as follows.

10. The initial order dated 31/12/1991 through which the applicant was asked or called upon to discharge the functions of Director (Horticulture) in a look after capacity reads as follows:

“Consequent upon repatriation of Shri P.S. Bhatnagar from M.C.D. w.e.f. 1.1.92 (A.N.), Shri P.C. Tomar, Dy. Director (Horticulture) shall look after the work of the post of Director (Horticulture), in addition to his own duties, till further orders. He will not be paid any remuneration for the additional work.

2. This issues under orders of the Commissioner.”

11. From a plain reading of this order, it is clear that it was made clear to the applicant that on account of holding this charge, he would not be entitled to any additional benefits in terms of pay and allowances.

12. It is fairly well settled that an official holding a charge as a stop gap arrangement, be it called by any name, does not have an inherent right to claim the salaries and allowances of the higher post that he is so holding. In the present instance, the initial order dated 31.12.1991 itself states that the



applicant will not be paid any remuneration for the additional work. The applicant having accepted the arrangement or the assignment as per the order mentioned cannot now go back in time and re-open the whole issue as if it was his basic right to be given the emoluments prescribed for the higher post. If he was aggrieved by the arrangement made by the order mentioned above, he had ample opportunity to ventilate his grievances before the competent authorities. There is nothing on record to show that he did so.

13. In view of the facts and circumstances of the case, pleadings on record and the arguments advanced by the respective learned counsels for the parties, duly examined and discussed as above, we find that there is no merit in the present OA and the same is accordingly dismissed. There shall be no order as to costs.

(**A. K. Bishnoi**) (**Justice L. Narasimha Reddy**)
Member (A) Chairman

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