

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

OA No.1699/2014

With

OA No.1700/2014

OA No.1701/2014

OA No.1702/2014

OA No.1703/2014

OA No.1704/2014

OA No.1705/2014

OA No.1706/2014

OA No.1709/2014

OA No.1712/2014

OA No.1713/2014

Reserved on: 29.09.2015

Pronounced on: 31.03.2016

Hon'ble Shri Sudhir Kumar, Member (A)

Hon'ble Shri Raj Vir Sharma, Member (J)

OA No.1699/2014

Sh. Lekhraj Sharma (Garden Chaudhary)

S/o Late Sh. Goshilal

Aged about 51 years

House No.18, Gali No.10,

Meethapur Extn,

Manbhari Kunj, Delhi.

...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

South Delhi Municipal Corporation

Dr.S.P.M.Civic Centre, Minto Road,

New Delhi-100 002.

Through Commissioner.

...Respondent

(By Advocate: Sh.R.K.Jain)

OA No.1700/2014

Ved Ram (Garden Chaudhary)

S/o Late Sh. Shyam Lal

(2)

Aged about 51 years
243 Dere Village
New Delhi-74.

...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

South Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.

Through Commissioner. ...Respondent

(By Advocate: Sh.R.K.Jain)

OA No.1701/2014

Sh. Ajit Singh (Garden Chaudhary)
S/o Late Sh. Het Ram
Aged about 54 years
L-268/4, Sangam Vihar,
New Delhi-1100062.

...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

South Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.

Through Commissioner. ...Respondent

(By Advocate: Sh.R.K.Jain)

OA No.1702/2014

Radha Charan (Garden Chaudhary)
S/o Late Sh. Jaydev Sharma
Aged about 53 years
Goan Fatehpur Beloch
Tehsil: Balawagarh,
District: Faridabad, Haryana
New Delhi-110062.

...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

(3)

Versus

South Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.

Through Commissioner.

...Respondent

(By Advocate: Sh.R.K.Jain)

OA No.1703/2014

Sh. Zile Singh (Garden Chaudhary)
S/o Late Sh. Sukhan Singh
Aged about 58 years
Ram Nagar Colony Ward No.10,
Palwal Haryana.

...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

South Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.

Through Commissioner.

...Respondent

(By Advocate: Sh.R.K.Jain)

OA No.1704/2014

Sh. Suresh (Garden Chaudhary)
S/o Late Sh. Hari Ram
Aged about 51 years
Village Nathpur, DLF Phase-III,
Gurgaon, Haryana.

...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

South Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.

Through Commissioner.

...Respondent

(By Advocate: Sh.R.K.Jain)

OA No.1705/2014

Chander Has (Garden Chaudhary)
S/o Late Sh. Manage Ram
Aged about 47 years
House No.B-402, Gali No.16
Near Radha Kishan Mandir Sant Nagar,
Burari, Delhi-84. ...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

North Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.
Through Commissioner. ...Respondent

(By Advocate: Sh.S.P.Jain)

OA No.1706/2014

Satpal (Garden Chaudhary)
S/o Late Sh. Charan Singh
Aged about 49 years
13/120, Sangam Vihar,
Budh Bazar Road, New Delhi-62. ...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

South Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.
Through Commissioner. ...Respondent

(By Advocate: Sh.R.K.Jain)

OA No.1709/2014

Sh. Satya Dev (Garden Chaudhary)
S/o Late Sh. Bhagwan Sahai
Aged about 49 years

(5)

H.No.221, Village Kondal P.O.Khas,
Teh: Hethin Dist:Palwal
Haryana. ...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

South Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.
Through Commissioner. ...Respondent

(By Advocate: Sh.R.K.Jain)

OA No.1712/2014

Sh. Balak Ram (Garden Chaudhary)
S/o Late Puran Singh
Aged about 51 years
H.No.489, Gali No.10, Phase-6,
Shiv Vihar, Karwal Nagar, Delhi. ...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

North Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.
Through Commissioner. ...Respondent

(By Advocate: Sh.S.P.Jain)

OA No.1713/2014

Sh.Balbir Singh (Garden Chaudhary)
S/o Late Chet Ram
Aged about 55 years
1795/A, Gali No.5, Sastri Colony,
Sonipat, Haryana. ...Applicant.

(By Advocate: Sh.Yash S.Vijay for Sh. Sanjoy Ghosh)

Versus

North Delhi Municipal Corporation
Dr.S.P.M.Civic Centre, Minto Road,
New Delhi-100 002.

Through Commissioner.

...Respondent

(By Advocate: Sh.S.P. Jain)

ORDER

Per Sudhir Kumar, Member (A):

This batch of 11 similar cases was heard together, reserved for orders together, and therefore, they are being decided through a common order.

2. These cases concern the posts in the Horticulture Wing of the erstwhile Municipal Corporation of Delhi (MCD in short), which has since been trifurcated into three Corporations, i.e. South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation. For the sake of convenience, we shall discuss the facts of the OA No.1699/2014, which was first in the *seriatim* order of being registered with the Registry, and would only discuss the differences, if any, in respect of all other OAs.

OA No.1699/2014

3. The applicant of this OA joined in the erstwhile MCD as a Daily Wager Beldar on 23.03.1985. He was appointed substantively as Mali with the MCD on 01.04.1990. The promotional posts from the posts of Mali were termed as Garden Chaudhary, and as per the

Recruitment Rules (RRs, in short), the posts of Garden Chaudhary were to be filled up 50% by promotion of Malis, and 50% by direct recruitment from the open market. However, it appears that there was no bar for the serving Malis of the erstwhile MCD to participate in such direct recruitment, without waiting for their seniority-cum-merit based regular promotion, in turn, by virtue of their seniority in the Mali cadre.

4. The case of the applicants is that RRs for the posts of Garden Chaudhary were notified on 14.02.1983, and on 30.11.1988 a Circular was issued stating that the RRs for the post should be reviewed once in five years in order to give effect to such changes, as are necessary to bring them in conformity with the changed position, which later instructions have not been followed.

5. The applicant has claimed that soon after his having worked as Mali for three years, he was assigned the current duty charge of Garden Chaudhary, however, while it has been mentioned in the RRs that the educational qualification for the post of Garden Chaudhary would be High School/Matric, with Agriculture as one of the subjects, from any recognized Board/School/University, as being an essential requirement, with 7 years of regular service on the post of Mali for the purpose of promotion, the applicant's claim is that an exception has been made in respect of the educational qualifications for the purpose of such promotion, in respect of those

Malis who were in regular employment as Malis, as on the day such RRs for the post of Garden Chaudhary were framed, i.e. as on 14.02.1983.

6. Though the applicant was first assigned the duties on current charge basis against the post of Garden Chaudhary after completion of just three years of service as Mali, but later, without his being substantially promoted as such Garden Chaudhary, he was further assigned the current duty charge of the post of the Assistant Director (Horticulture) also, once again in the officiating capacity.

7. As mentioned above also, the basic grievance of the applicant is that the respondents have not reviewed the RRs for the posts of Garden Chaudhary, even though they were framed way back in the year 1983, nor have they increased the sanctioned strength of the posts of Garden Chaudhary. His further grievance is that over the years, the respondents have been appointing the Malis as Garden Chaudhary on officiating basis, and continuing them as such for years, without either conferring the financial benefits of the higher post, or paying their differential wages, as per the substantial pay of the posts of Garden Chaudhary concerned.

(9)

8. Though the applicant was not educationally qualified for the post of Garden Chaudhary as per 1983 RRs, yet he had been assigned the duties of that post on current charge basis, and in the year 2013, once again without reviewing the RRs concerned, the respondents had conducted a trade test for the posts of Garden Chaudhary, at which the applicant obtained the qualifying marks in the trade test, yet he was shown as not finally selected, due to his having secured lesser marks in the order of merit. Now, after more than 21 years of his having continued to work against the post of Garden Chaudhary, the applicant is faced with the prospect of being required to work under a person who had been working as Mali under his own supervision. As a result, the applicant has filed the present OA, seeking the following reliefs:

“a. Direct the Respondent to adhere to the OM dated 30.11.1988 issued by the then Delhi Administration and the MCD Commissioner’s order dated 19.03.2010, and to review the RRs for the post of GC in order to address the anomalous situation that has arisen over the years on account of the Respondent assigning officiating duties to malis such as the Applicant and continuing them for years on end as officiating GC.

“b. Direct the Respondent to treat the Applicant, and similarly situated malis who are officiating as GCs, as a distinct class and the permit them to be eligible for the post of GC notwithstanding the absence of any eligible criteria.

c. Direct the Respondent to consider the applicant for promotion to the post of GC as he has the requisite qualification of High School with Agriculture or in terms of such revised RRs to pass in the trade test by treating the applicant (and persons similarly situated) as a different class of persons and for the purposes of such a trade test consider the period of daily wager employment

(10)

as mali as deemed regular employment and/or (b) exempted a mali who has officiated as a GC for at least [21] years from the education qualifications for the purpose of at least taking part in the proposed trade test.

d. Until the completion of this exercise, restrain the respondent from reverting the Applicant from the post of GC.

e. Pass any such other or further order(s) as this Hon'ble Tribunal may deem, fit and proper in the interest of justice and in favour of the Applicant; and

f. Allow the present application with costs."

9. He had also prayed for interim relief, but the prayer for interim relief was never considered, and, therefore, we need not comment upon the same at this stage of final orders.

7. The applicant has annexed a copy of order passed by this Tribunal dated 28.07.2010 in TA No.1224/2009 in **Shri Ravinder Pal Singh vs. Municipal Corporation of Delhi & Others**, order dated 17.02.2010 in TA No.1180/2009 in **Mehak Singh vs. Municipal Corporation of Delhi**, order dated 10.08.2010 in OA No.2304/2009 with OA No.2312/2009 in **Shri Yusuf vs. Municipal Corporation of Delhi**, and the order dated 22.07.2010 in TA No.1091/2009 with connected TAs in **Shri Prem Singh & Others vs. Municipal Corporation of Delhi**. By virtue of these orders of this Tribunal, the applicants in these OAs were not only allowed to participate in the trade test for their confirmation and substantive appointments against the posts of Garden Chaudhary, but it was

(11)

also ordered for payment of officiating allowance for the posts of Garden Chaudhary, if it was established that the applicant was made to officiate against higher duties by the Deputy Director (Horticulture), who was held to be competent authority to assign the work of Garden Chaudhary.

11. It is submitted that approximately 11000 Malis had appeared in the trade test held for the purpose of promotions to the posts of Garden Chaudhary, but the applicant did not qualify at the same. He has, therefore, taken the ground that the respondents have erred in their not having reviewed the RRs for the posts of Garden Chaudhary, even though those RRs were framed as far back as in the year 1983, and that the respondents have not revised the RRs to address the anomaly arising out of the fact that the Malis, such as the applicant of this OA, who was not qualified for holding the post of Garden Chaudhary, as per the 1983 RRs, had, in fact, continuously and uninterrupted, discharged such duties on the said higher post, to the entire satisfaction of the respondents.

12. He has also taken the ground that the respondents could not have conducted the trade test and made the applicant to appear at the same, when he had been further promoted even prior to the said trade test. He has also taken the ground that arbitrarily and unfairly the respondents are now poised to revert the applicant from the post of Garden Chaudhary to the post of Mali, which would

(12)

adversely affect the morale of the entire Corporation, and would not be in public interest, in addition to their action being against the rights of the applicant to dignity, and equal protection of the laws.

13. He has claimed that he is eligible and entitled to be appointed as Garden Chaudhary by virtue of the mere fact of his continuously officiating as Garden Chaudhary for 21 years, to the satisfaction of the Respondent-Corporation, and the mere fact that the Respondent-Corporation had not conducted any trade test for so many years, cannot be held against him. It was submitted that in the case of **Bhagwati Prasad vs. Delhi State Mineral Development Corporation**; (1990) 1 SCC 361, it has been held that practical experience can substitute educational and other qualifications.

14. He has further sought shelter behind the Apex Court's judgment in **Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma**; (1988) 5 SSC 87, in which it has been held that an employee cannot be made to officiate against the higher post for years on end as a "stop gap" arrangement, and then be denied regularization and the attendant benefits that are attached to such a higher post.

15. The applicant has laid a challenge to the RRs of 1983, as being discriminatory, as they do not permit any relaxation, and are, therefore, incompetent to address the anomalous situation that has

(13)

arisen on account of mismanagement of the respective Cadres by the Respondent Corporation(s). He has further taken the ground that even though the respondents are not responsible to necessarily formulate a scheme to address the anomalous situation created by them, by absorbing all the officiating employees, without subjecting them to any trade test, but at least these persons should be given a chance to participate in the trade test, by relaxation of the eligibility criteria.

16. He has submitted that it cannot be the stand of the respondent that while the applicant is competent and qualified enough to officiate on current charge basis as Garden Chaudhary for years on end, but he is not eligible to even participate in the trade test being conducted for regular selection as Garden Chaudhary. He has also submitted that in the sister institutions, such as Delhi Development Authority (DDA, in short), and Central Public Works Department (CPWD, in short), also, similar posts of Garden Chaudhary exist, for which such onerous eligibility criteria is not stipulated, and, therefore, the respondents are guilty of having violated the rights of the applicant under Articles 14, 19, 21 and 23 of the Constitution, by adopting illegal, arbitrary and exploitative practice.

17. He has further submitted that the respondent-Corporation is under an obligation to continue the applicant, and other similarly

(14)

situated persons, as officiating Garden Chaudhary, until suitable sanctions are obtained, or vacancies are created for their absorption, and that the respondents cannot be permitted to revert the applicant, and other similarly situated persons, from the posts of officiating Garden Chaudhary, merely on the pretext that they have held a one off trade test, and have already filled up the limited sanctioned vacancies. It was further submitted that such reversion, after years of their officiating as Garden Chaudhary, the right to dignity and life under Article 21 of the Constitution of the applicant would stand violated and breached if he is arbitrarily reverted, and made to work under a junior, a person who had been acting under his supervision, directions and control for many years, and hence this OA.

18. Through their counter reply filed on 07.09.2015, the respondents submitted that the applicant is still working in the substantive post of Mali, and not on the post of Garden Chaudhary. It was further submitted that the framing of RRs is entirely in the domain of the Executive, and that the applicant, who is not eligible for promotion to the post of Garden Chaudhary, as per the existing RRs, can have no cause of action to file the present OA. It was further submitted that in regard to the particular case of the applicant, he was directed to perform the officiating duties of Garden Chaudhary, in the exigencies of official work, even though

(15)

he was and is not eligible for promotion to that post, as per the RRs in vogue. It was submitted that no need has been felt to review the present RRs for the posts of Garden Chaudhary, and as per the RRs in vogue at present, the applicant is not entitled at all for being considered for promotion to the post of Garden Chaudhary.

19. It was further submitted that though in TA No. 1224/2009, the Tribunal had allowed the applicant therein to participate in the trade test, subject to determination of his eligibility, but in the present OA, the present applicant is not at all eligible for promotion, and the orders passed by the Tribunal in the said TA are not applicable to the applicant in the present case. It was, therefore, submitted that the applicant was rightly not allowed to participate in the trade test, as he was not having the requisite qualifications for being considered for promotion to the post of Garden Chaudhary, as per the prevailing RRs. It was, therefore, prayed that the OA is without any merit, and may be dismissed with costs.

OA No.1700/2014

20. The facts of this case are also exactly similar to the case in OA No.1699/2014. The applicant of this OA entered in the employment of the respondent(s) as a Daily Wager Mali in the year 1984, and was given substantive appointment as a Mali on 01.04.1990. The grievance of the applicant of this OA also is that while persons junior to him were allowed to participate in the trade

(16)

test conducted for the post of Garden Chaudhary, he was not so allowed, even though he was xth class passed, but, as per RRs, he did not have the educational qualification of High School with Agriculture as one of the subjects. Taking similar grounds, he had assailed the order of the respondent(s), which need not be repeated.

21. The respondent(s) had also filed a counter reply on 07.09.2015, exactly similar to the counter reply filed in OA No.1699/2014, the contents of which need not be repeated here once again.

OA No.1701/2014

22. The applicant of this OA was appointed first as Daily Wager Mali Beldar, and thereafter he given permanent employment as Mali on 01.04.1990, and has claimed to be performing the current duties of Garden Chaudhary with effect from 1997. All the pleadings in the OA are the same. He has also claimed protection of the Hon'ble Apex Court's judgment in **Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma** (supra). All the other pleadings, grounds and even the prayers being similar as in OA No.1699/2014, the same are not being repeated here once again.

23. The respondent(s) also filed counter reply on 07.09.2015, exactly similar to the counter reply filed in OA No.1699/2014, the contents of which need not be repeated here once again.

OA No.1702/2014

24. The applicant of this OA was employed by the respondent as Daily Wager Mali in the year 1979, and was given permanent and substantive appointment as Mali with effect from 01.04.1987. All the other pleadings, grounds and even the prayers being similar to OA No.1699/2014, the same are not being repeated here once again.

25. The respondent had also filed an exactly similar counter reply on 07.09.2015, the contents of which also need be repeated here once again.

OA No.1703/2014

26. The applicant of this OA had been engaged by the respondent(s) as Daily Wager Beldar in the year 1975, and he was substantively appointed as Mali in 1981, and claims to have been assigned the current duty basis work of Garden Chaudhary in 1996. All the other pleadings, grounds and even the prayers being similar to OA No.1699/2014, the same are not being repeated here once again.

27. He had also filed a copy of orders of this Tribunal dated 28.07.2010 in TA No.1224/2009 in **Shri Ravinder Pal Singh** vs.

Municipal Corporation of Delhi & Others, order dated 17.02.2010 in TA No.1180/2009 in **Mehak Singh vs. Municipal Corporation of Delhi**, order dated 10.08.2010 in OA No.2304/2009 with OA No.2312/2009 in **Shri Yusuf vs. Municipal Corporation of Delhi**, and the order dated 22.07.2010 in TA No.1091/2009 with connected TAs in **Shri Prem Singh & Others vs. Municipal Corporation of Delhi**.

28. The respondent(s) had also filed an exactly similar counter reply on 07.09.2015 as filed in OA No.1699/2014, the contents of which need not be repeated here once again.

OA No.1704/2014

29. The applicant of this OA had joined the respondent(s) as Daily Wager Mali in the year 1988, and he was given permanent employment as a Mali with effect from 01.04.1995. All the other pleadings, grounds and even the prayers being similar to OA No.1699/2014, the same are not being repeated here once again.

30. The respondent had also filed an exactly similar counter reply on 07.09.2015, as filed in OA No.1699/2014, the contents of which also need not be repeated here once again.

OA No.1705/2014

(19)

31. The applicant of this OA started working with the respondent(s) as Daily Wager Mali in the year 1984, and he was permanently employed as a Mali with effect from 01.04.1990, and claims to have been assigned the current duty work of Garden Chaudhary with effect from 2005. All the other pleadings, grounds and even the prayers being similar as in OA No.1699/2014, the same are not being repeated here once again.

32. The respondent had filed slightly more detailed counter reply in this case on 07.01.2015. It was denied that the applicant was working on the post of Garden Chaudhary, and it was submitted that the applicant was still working as Mali, and was not assigned the work of Garden Chaudhary. It was submitted that the copy of Identity Card enclosed as Annexure A-4 by the applicant does not have any date of issue, through which it could have been proven that he was indeed holding the post of Garden Chaudhary. It was further submitted that all the posts of Garden Chaudhary have already been filled up, as per the provisions of the RRs, and the trade test had been conducted, and the applicant of this OA had appeared in the said test, but he was not selected due to his having secured lesser marks in the order of merit. It was submitted that since the applicant was working in the substantive post of Mali, therefore, the question of his reversion from the post of Garden

(20)

Chaudhary to the post of Mali does not arise. It was, therefore, prayed that the OA may be dismissed with costs.

33. The applicant had filed a rejoinder on 10.03.2015. It was denied that he is working as Mali, and it was reiterated that he had been continuously and uninterrupted discharging the services of Garden Chaudhary with the respondent for a number of years. It was further submitted that the respondents are duty bound to revise the RRs after every five years, which RRs have not been reviewed till date, and, therefore, the cause of action for filing of the OA was continuing, and still subsisting. It was denied that the Identity Card creates any doubt, and submitted that the applicant has annexed a number of documents to demonstrate that he had been working as Garden Chaudhary with the respondent(s). It was, therefore, prayed that the OA be allowed.

OA No.1706/2014

34. The applicant of this OA had joined the respondent(s) as Daily Wage Mali on 31.10.1984, and he was given substantive appointment as Mali with effect from 01.04.1990. All the other pleadings, grounds and even the prayers being similar to that as in OA No.1699/2014, the same are not being repeated here once again.

(21)

35. The respondent(s) had filed their counter reply on 07.09.2015, exactly similar to that in OA No.1699/2014, and, therefore, the contents of the same need not be repeated here once again.

OA No.1709/2014

36. The applicant of this OA had joined the respondent(s) as Daily Wage Mali in August 1984, and he was given substantive appointment as Mali with effect from 01.04.1990. Rest of the pleadings, grounds and even the prayers being similar to OA No.1699/2014, the same are not being repeated here once again.

37. The respondent(s) had filed counter reply on 07.09.2015, exactly similar to that in OA No.1699/2014, the contents of which also need not be repeated here once again.

OA No.1712/2014

38. The applicant of this OA had joined the respondent(s) as Daily Wage Beldar on 26.12.1984, and he was granted permanent employment by the respondent(s) as a Mali with effect from 01.04.1990. Rest of the pleadings, grounds and even the prayers being similar to OA No.1699/2014, the same are not being repeated here once again.

39. The respondent(s) had filed counter reply on 07.01.2015 denying that the applicant was ever posted as Garden Chaudhary, and they had submitted a copy of the option form filled up by the

applicant regarding Medical Allowance claim, dated 30.10.2009, enclosed as Annexure R-1, which showed the designation of the applicant as Mali. As per Annexure R-2 dated 10.05.2012 also, the applicant was shown to have been working as Mali, and not as Garden Chaudhary. The copy of the Identity Card produced by the applicant was also disputed as being incorrect, and it was prayed that the OA be dismissed, as being absolutely wrong, baseless and devoid of merit, because the applicant had never been posted as Garden Chaudhary.

40. The applicant filed a rejoinder on 10.03.2015, more or less reiterating his contentions, as made out in the OA, and vehemently denying that he had not worked as Garden Chaudhary, as alleged in the counter reply. It was prayed that the OA be allowed.

OA No.1713/2014

41. The applicant of this OA had joined the respondent(s) as Daily Wage Beldar in 1983, and he was granted permanent employment as a Mali with effect from 01.04.1989. All the other pleadings, grounds and even the prayers in the OA being the same as in the first OA No.1699/2014, the same are not being repeated here once again.

42. The respondent(s) had filed counter reply on 07.01.2015, denying the applicant's submissions, and it was submitted that he had never been assigned the duties of the post of Garden

Chaudhary. It was submitted that the substantive designation of the applicant is Mali, and not Garden Chaudhary, and that the copy of the Identity Card filed by the applicant did not have the date of its issue, which creates doubt, and it was prayed that the OA does not have any merit, and deserves to be dismissed with costs.

43. The applicant filed a rejoinder on 10.03.2015, more or less reiterating his contentions, as made out in the OA, and prayed that the OA be allowed, in the terms, as prayed for.

44. Heard. The cases were argued on the lines of the pleadings. The applicants' case is that the respondents were under obligation to revise their RRs notified in 1983, which included Agriculture as one of the essential subjects at High School level. It was also submitted that pursuant to the order dated 28.07.2010 in TA No.1224/2009 in **Shri Ravinder Pal Singh vs. Municipal Corporation of Delhi & Others**, order dated 17.02.2010 in TA No.1180/2009 in **Mehak Singh vs. Municipal Corporation of Delhi**, order dated 10.08.2010 in OA No.2304/2009 with OA No.2312/2009 in **Shri Yusuf vs. Municipal Corporation of Delhi**, and the order dated 22.07.2010 in TA No.1091/2009 with connected TAs in **Shri Prem Singh & Others vs. Municipal Corporation of Delhi**, the applicants in those cases had been permitted to appear at the trade test, and also for grant of officiating allowances, if it was established that the applicants were

(24)

made to shoulder higher duties by the Deputy Director (Horticulture), and the dues and differential salary were ordered to be paid to them, the same benefits should be extended to them also. These orders have already been enumerated above also.

45. During the course of arguments, learned counsel for the applicant also relied upon two judgments of the Hon'ble Apex Court, the first being **Bhagwati Prasad vs. Delhi State Mineral Development Corporation**; (1990) 1 SCC 361, which judgment flows from the labour laws, and concerns regularization, confirmation, and relevance of the educational qualifications in respect of the Mineral Development Corporation covered under the labour laws. In that case concerning Delhi State Mineral Development Corporation, it was held by the Hon'ble Apex Court that practical experience would always aid the person to effectively discharge his duties, and is a sure guide to assess the suitability. It was held that the initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made in the Corporation as daily rated workers, and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them confirmation in the respective posts, on the ground that they lack the prescribed educational qualifications.

46. It is clear that the ratio of the above judgment would not accrue any benefit to the applicants before us, as all of them have already been regularized and confirmed in the posts of Mali, even though some of them were appointed as Daily Wage Beldar and some of them as Daily Wage Mali. At the time of the initial appointment in a particular post, the issue is never regarding possession of higher educational qualifications, which would make them eligible for promotion to the next hierachal promotional post, with which aspect this judgment of the Hon'ble Apex Court does not deal with.

47. In the second relied upon case of **Secretary-cum-Chief Engineer, Chandigarh vs. Hari Om Sharma** (supra), the Hon'ble Apex Court has held that an employee cannot be made to officiate against a higher post for years on end, as a “stop gap” arrangement, and then be denied regularization and attendant benefits that are attached to such a post. However, in this case also, the Hon'ble Apex Court did not hold that such regularization in the promotional post can be granted *de hors* the RRs, and in the absence of possession of required minimum educational qualification.

48. Except in the case of applicant of OA No.1699/2014, there is nothing on record in all other cases to show that the applicants

(26)

were ever even placed Incharge of the posts of Garden Chaudhary by the competent authority within the erstwhile MCD. They have merely claimed to have been working against the posts of Garden Chaudhary only on the basis of some Identity Cards, the origin of which Identity Cards has not been proved, and has been disputed by the respondents, and they have not been conclusively proved as genuine by the applicants, by bringing any proof to that effect. Also, none of the applicants has even indicated an exact particular date on which he was placed in charge of the current duties of the post of Garden Chaudhary by a Competent Authority, or produced any orders to that effect.

49. In its judgment in the case of **Chief of Naval Staff & Another vs. G.Gopalakrishna Pillai**; 1996 (1) SCC 521, the Hon'ble Apex Court has held that even when a person is eligible for any promotion, and is so promoted later, he is not entitled to arrears of pay and allowances, unless he has been substantively promoted, and assumes charge of the post, after his promotion as per the proper procedure in this regard. In the instant cases, the applicants are not even educationally qualified to be so promoted. Even in regard to the assertions that the applicants had indeed been assigned the current duty charge of Garden Chaudhary, none of them have been able to produce any such documents, through Office Orders of the Competent Authority in MCD, along with their

OAs. Therefore, the applicants cannot lay a claim to have enjoyed even temporary promotions to the posts of Garden Chaudhary merely on the basis of such averments not supported by any documentation. The Hon'ble Apex Court had in **Chief of Naval Staff & Another vs. G. Gopalakrishna Pillai** (supra) held as follows:

"Heard learned counsel for the parties. The short question which arises for consideration is whether or not the Central Administrative Tribunal by the impugned judgment dated June 2, 1994 passed in O.A.No.1507 of 1993 has correctly decided the question of seniority of the respondent Sri G. Gopalkrishnan Pillai. It is an admitted case that the said Sri Pillai was given ad hoc appointments to the post of Storekeeper at Goa and while he had been continuing in such ad hoc appointments, he was regularised in the post of Storekeeper. The Naval Department has given appropriate fitment in the scale of a Storekeeper to Sri Pillai after giving credit for the officiation in the said post but so far as the seniority to the cadre of Storekeeper is concerned, the seniority has been given only from the date when he was regularised in the post of Storekeeper. Sri Pillai felt aggrieved for not getting seniority by computing the period spent on ad hoc service as a Storekeeper. Claiming seniority by reckoning ad hoc service, he made a representation to the Naval Department which was rejected.

Thereafter, the Central Administrative Tribunal was moved by the respondent contending inter alia that as he had been officiating on ad hoc basis in the post of Storekeeper continuously till he was selected and regularly appointed to the post of Storekeeper, the entire period of continues officiation would ensure to his benefit for the purpose of fixing seniority in the cadre of Storekeeper. Such contention has been accepted by the Central Administrative Tribunal by the impugned order. It has been directed that Sri Pillai should be given seniority to the post of Storekeeper from the date he started officiating in the said post and all consequential benefits flowing from such seniority should also be given to him.

The learned senior counsel appearing for the appellant has submitted before us that ad hoc appointments to the said post of Storekeeper had been given to the respondent by clearly indicating in the orders of ad hoc appointment that such appointment on ad hoc basis would not confer any right to claim seniority in the said post. That apart, law is well settled that in the absence of any specific rule of service by which a person holding an ad hoc post will be entitled to get seniority to the said post if he is later on selected on a regular basis to the post. The holder of ad hoc post is not entitled to claim seniority on the basis of ad hoc service. In support of such contention reliance has been made to a decision of this Court in Union of India & anr. Vs. S.K. Sharma (1992 (2) SCC 728). It has been held in the said decision that ad hoc service cannot be counted for determining seniority. In the said decision, the earlier decision of the Constitution Bench of this Court in Direct Recruits Class II Engineering Officers Association Vs. State of Maharashtra and others (1990 (2) SCC 715) has also been referred to and relied on.

The learned counsel for the respondent engaged by the Supreme Court Legal Aid Committee, has, however, submitted that it is an admitted position in this case that Sri Pillai has been regularly selected to the post of Storekeeper and appointed to such post. Prior to such selection and appointment to the post of Storekeeper on regular basis. Sri Pillai had continuously officiated in the post of Storekeeper on the basis of ad hoc appointments given to him. If an employee is ultimately selected on a regular basis to a post in which he had continuously officiated, then even if such employee had held the post only on ad hoc basis, he will be entitled to claim seniority from the date of ad hoc appointment. In support of such contention, the learned counsel has relied on a decision of this Court in Union of India Vs. Ansusekhar Guin and others (1989 (1) SCC 283). It, however, appears to us that in the said case, this Court has only reiterated the principle that if an employee had been appointed on ad hoc or temporary basis exceeding the quite fixed for such appointment such employee would be entitled to get the credit of continuous officiation in fixing seniority provided such ad hoc or temporary appointment had been made by a regularly constituted body for holding the selection of the candidates to be appointed. In the instant case, the respondent Sri Pillai was not

(29)

selected by a regularly constituted selection body for giving ad hoc appointments to the post of the Storekeeper and on such selection he had continued in ad hoc service till regular appointment to such post was made. On the contrary, the case of Sri Pillai is that while he had been holding ad hoc posts, he got selected on a regular basis to the said post of Storekeeper. Hence, the decision relied on by the learned counsel for the respondent is not applicable in the facts and circumstances of this case. It also appears to us that the Tribunal in passing the impugned order has relied on condition 'B' as referred to in the decision of the Constitution Bench in Direct Recruits Class II Engineering Officers' Association (*supra*) in support of the impugned order. In our view, the principle enunciated in the said case is not applicable in the facts of this case because the initial appointment of Sri Pillai by way of ad hoc arrangement, was not made by following the procedure laid down by the Rules as referred to in Condition-B in the said decision. Hence, the decision of the Tribunal cannot be sustained. We, therefore, allow this appeal and set aside the impugned order without however any order as to costs."

50. Therefore, even if, for the sake of arguments, the plea that the applicants of the remaining 10 O.As. (other than the applicant of OA No.1699/2014) were also indeed placed on current duty charge of Garden Chaudhary is accepted, all of the applicants of these 11 O.As. were still working in their own substantive posts of Mali, without their occupying the promotional post in substantive capacity, after their having been so appointed in substantive capacity after such promotion, and, therefore, they cannot lay a claim to either those posts, or any differential wages for appointments against the posts of Garden Chaudhary. All the judgments cited by the applicants in TAs and the OAs decided by

this Tribunal are not binding upon this Bench, even under the law as laid down by the Apex Court in the case of **S.I.Roop Lal vs. Lt. Governor, Delhi**, AIR 2000 SC 594, as binding precedents of the Coordinate Benches, since in all those judgments and orders, the law of the land, as laid down by the Apex Court in **Chief of Naval Staff & Another vs. G.Gopalakrishna Pillai** (supra) noted by us above, had not been noticed.

51. Therefore, being bound by the judgment of the highest Court of this land, we find no merit in the prayers, as made out by the applicants of these OAs, and the applicants cannot be allowed to either seek a direction in the nature of mandamus upon the respondents for their being allowed to participate in the examination for the posts of Garden Chaudhary, in the absence of the essential educational qualifications prescribed under the RRs, which are in vogue and prevalent even as on today, or differential wages even if they had indeed worked on current charge basis against such posts.

52. As regards the arguments that the respondents have not revised the RRs every five years, as they are wont to, as per the DoP&T Instructions, and they can only raise an objection, but this

(31)

would not enure or accrue any cause of action or any enforceable rights in favour of the applicants, just because the respondents have not amended the RRs with the desirable periodicity of five years.

53. Therefore, all the OAs are rejected, but there shall be no order as to costs.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

/kdr/