

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.3697/2012

Reserved on:02.08.2017
Pronounced on:04.08.2017

**HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

D.K. Singh
S/o Late Sh. M. Singh
R/o 9/5, Jal Vihar, Lajpat Nagar,
New Delhi. ...Applicant

(By Advocate: Mr. M.K. Bhardwaj)

VERSUS

Delhi Jal Board & Ors. through

1. The Chief Executive Officer,
Varunalaya Phase-II,
Jhandewalan, New Delhi.
2. The Member (Administration),
Varunalaya Phase-II,
Jhandewalan, New Delhi.
3. The Director (A&P)
Varunalaya Phase-II,
Jhandewalan, New Delhi.
4. The Assistant Commissioner (D),
Varunalaya Phase-II,
Jhandewalan, New Delhi.Respondents

(By Advocate: Mr. Himanshu Upadhyay)

ORDER

Hon'ble Ms. Nita Chowdhury, Member (A):

This Original Application has been filed by the applicant against the unfair action of the respondents in depriving him of the

salary attached to the post of Chief Law Officer (CLO in short) as per the recruitment rules and as per the law laid down by the Hon'ble Supreme Court in the case of ***Selvaraj Versus Lt. Governor of Island, Port Blair and Ors., 1998 (4) SCC 291*** and of the Hon'ble High Court in the case of ***Bharat Sanchar Nigam Ltd. Vs. S.N. Paracer and Others {W.P. (C) No.8122/2011}*** .

2. The examination of the present file reveals that this matter has been fully argued and judged by Hon'ble Mr.Ashok Kumar, Member (A) and Hon'ble Mr. Raj Vir Sharma, Member (J) in detail. Now the point which is sought to be reopened and reargued on the basis of the order passed by the Hon'ble High Court of Delhi in ***W.P. (C) No.471/2014*** in the case of D.K. Singh (applicant herein) Vs. Delhi Jal Board and Others decided on 28.01.2014 is that the claim made by the petitioner before the Hon'ble High Court was to the following effect:-

“he would like to withdraw the writ petition as he would like to move an application before the Tribunal pointing out as above. Accordingly, the writ petition is dismissed as not pressed”.

3. This is an OA in which decision was given by Central Administrative Tribunal, Principal Bench on 02.01.2014 dealing with all the issues in detail. Subsequently, the applicant filed a Writ Petition before the Hon'ble High Court of Delhi and alleged that certain points had not been considered by the Tribunal while

delivering the judgment. Hon'ble High Court passed the following order:-

“1. After some arguments learned counsel states that since the contention urged which petitioner is pressing before us has been noted by the Tribunal but not dealt with, the petitioner would like to withdraw the writ petition as he would like to move an application before the Tribunal pointing out as above.

2. The writ petition is dismissed as not pressed.

3. Needless to state if the petitioner can point out to the Tribunal that a contention has been noted but not dealt with, the Tribunal shall decide the application as per law.

4. No costs”.

4. Today, the applicant re-agitated the issue and wanted that the DOP&T OM dated 10.02.2000 in which clarifications have been given with regard to ACPS on posts which are isolated, should be considered and in view of the said OM, he is emphasising on the following point:-

S.No.	Point of doubt	Clarification
10.	For isolated posts, the scale of pay for ACPS as recommended by the Pay Commission may be implemented and not the standard/common pay-scales indicated vide Annexure-II of the Office Memorandum dated August 9, 1999.	For isolated posts, the scales of pay for ACPS shall be the same as those applicable for similar posts in the same Ministry/Department/Cadre except where the Pay Commission has recommended specific pay-scales for mobility under ACPS. Such specific cases may be examined by respective Ministries/Departments in consultation with the

		Department of Personnel and Training. In the case of remaining isolated posts, the pay-scales contained in Annexure-II of the Office Memorandum dated August 9, 1999 (ACPS) shall apply
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To support his claim, applicant relies strongly on the judgment of the Hon'ble High Court of Delhi in the case of **Bharat Sanchar Nigam Ltd.** (supra), which reads as under:-

“1. Bharat Sanchar Nigam Limited (BSNL) claims to be aggrieved by an order of the Central Administrative Tribunal (CAT) dated 05.04.2011 where the respondent's application was allowed.

2. The brief facts are that the respondent, an employee of BSNL, at the relevant time was working as Superintending Engineer (Electrical) [hereafter referred to as SE (E)]; by the order dated 30.04.2003, he was asked to “look-after” the post of Chief Engineer (Electrical) [hereafter referred to as CE(E)] and functioned as such. It is not in dispute that eventually the respondent retired from the service without being regularly promoted as CE(E). Claiming that he had been arbitrarily denied the pay prescribed for the higher post of CE(E), and also claiming entitlement to pensionary benefits on the basis of such fixation, the respondent approached the Court by filing a Writ Petition which was later transferred to the CAT. By the impugned order, relying upon certain rulings of the Supreme Court, the CAT allowed the respondent's claim, to the extent of the respondent's entitlement to the differential salary, for the period he functioned as CE(E).

3. BSNL argues in these proceedings that the CAT's findings are untenable and relies upon the judgments reported as State of Haryana v. R.K. Aggarwal 1997 (6) SCC 509. It was argued that the CAT wrongly held that the respondent had discharged statutory functions for the duration he held the higher post. Learned counsel emphasized

the fact that the respondent never really discharged any statutory functions as an “appointing authority” or “disciplinary authority”, designated under the rules. In these circumstances, his tenure being tenuous, the claim for salary could not have been entertained, especially in view of express terms of the orders which conferred “looking-after” responsibility. Learned counsel stressed upon the fact that in terms of the order, the respondent was not entitled to higher salary attached to the post.

4. This Court has carefully considered the submissions as well as the records. The CAT relied on the rulings of the Supreme Court in three judgments, i.e. Selvaraj v. Lt. Governor, Port Blair and Ors. 1998 (4) SCC 291; Judhistir Mohanty v. State of Orissa and Ors. 1996 (VIII) AD (SC) 733 and a decision of the Division Bench judgment of this Court in Govt. of NCT of Delhi and Ors. v. Shri S.C. Gupta and Ors. [W.P.(C) 724/2010 (decided on 06.09.2010)]. In the latter decision, the Court took note of other decisions of the Supreme Court and also took note of Fundamental Rule 49 which regulates the pay of an individual asked to officiate on a temporary basis on independent basis or of higher responsibility. The rule clearly mandates that in addition to ordinary pay, he shall be allowed the pay admissible to him if he is appointed to officiate in the higher post. In S.C. Gupta (supra), the Court relied upon the decision in Balbir Singh Dalal and Ors. v. State of Haryana and Anr. 2002 (4) SCT 422. In all these cases, relied upon by the CAT - Selvaraj (supra); Judhistir Mohanty (supra) and S.C. Gupta (supra), the official was held entitled on the ground that he discharged duties, functions and responsibilities attached to a higher post. The Court was in no way concerned with whether such official did or did not discharge statutory functions – a point of distinction which is sought to be urged by the BSNL. Even otherwise, the discharge of a particular kind of statutory function, upon which much emphasis is laid, cannot be decisive of the person’s entitlement under FR 49 because the principle behind it is that as long as the individual is discharging or asked to discharge functions or powers attached

to higher post, he should be paid the salary prescribed for such post. The CAT noted, in our view rightly, that the facts in R.K. Aggarwal (*supra*) were somewhat different; the vacancy was on account of pending litigation and the petitioner there had demanded that he be given pay scale which was denied by the State. Such is not the case in the present instance. **The respondent and the others were in fact appointed on “look-after” arrangement. He would be entitled to the pay prescribed for the post in which he officiated and eventually superannuated while so officiating.** In the light of the above discussion, the Court finds no infirmity with the reasoning or finding of the CAT. The writ petition is accordingly dismissed.

5. Before going into the merits of the case, we would like to give brief back ground of the case. The applicant was appointed as Law Officer in 1994. The post of Chief Law Officer was created in the respondents organization on 14.07.2000 and in August 2000 since process for filling up the post was to take time, the applicant was made to work on the higher post. He later made representations from the year 2001 till 2010 for considering his case for promotion as Chief Law Officer and giving him the pay scale as attached to the post of CLO. He states that thereafter, in May 2011 he was granted 1st financial upgradation in the incorrect pay scale which was not even available in the respondents organization. He was granted the lesser scale of Rs.14400-18300 as against scale of Rs.16400-20000, which was meant for the post of CLO. The applicant requested for correcting the illegality and for giving him promotion on ad hoc basis, as done in other similar cases by relaxing the Recruitment

Rules. But while other Officers were promoted to the higher post, such as Director even without having required service as per Recruitment Rules, no action was taken in the case of applicant. Applicant has alleged that action of the respondents is violative of OM dated 09.08.1999 of DOP&T since they have not granted next higher scale attached to the post of CLO while giving him 1st financial upgradation. According to this OM, after completion of 12 years regular service, the Govt. servant is required to be given the next scale meant for the promotional post. In this case, the respondents have granted him the pay scale of Rs.14300-18300 instead of the promotional post pay scale of Rs.16400-20000. The action of the respondents is discriminatory and in violation of Articles 14 and 16 of the Constitution. He claims parity with other cases, in which persons have been granted higher pay scale on ad hoc basis in the cadres even by relaxing the Recruitment Rules, whereas he continued on the same post for 18 years without any promotion. Respondents failed to appreciate that the applicant could also be appointed on the higher post of CLO by way of internal deputation. Another ground raised is that the applicant had been discharging the duties of CLO with independent charge and was, therefore, entitled for the salary of the aforesaid post. In view of the decision of the Honble Supreme Court in case of **Secretary cum Chief Engineer, Chandigarh Versus Hari Om Sharma and Ors. 1998 (5) SCC 87** and **Selvaraj Versus Lt.**

Governor of Island, Port Blair and Ors. (supra), if a person has discharged the duties attached to higher post, he is entitled for the salary of the said post.

6. Respondents, on the other hand, have stated that the applicant was appointed as a Law Officer on 19.04.1994 in the pay scale of Rs.10000-15200 **but he was never appointed in the post of CLO** and hence the pay scale attached to that post cannot be granted to him. While the applicant was working in the post of Law Officer, he was given 1st financial upgradation on completion of 12 years of service on 19.04.2006. Later on the pay scale of Law Officer was revised w.e.f. 17.01.2007 from Rs.10000-16500 to Rs.12000-16500 and the said revised pay scale was given to him. After that the applicant was given the revised pay scale of Rs.14300-18300 w.e.f. 17.01.2007. In so far as parity between Mr. Pradeep Kumar Gupta and the applicant is concerned, Mr. Gupta was appointed as a Legal Superintendent and since he was fulfilling the condition for appointment, he was given that appointment. The appointment of Mr. Gupta is a different issue altogether, which does not apply in the applicants case. It is admitted by the respondents that the applicant was not fully eligible and qualified to hold the post of CLO and hence he was not appointed on that post. It is also denied that the applicant was made to discharge the duties of CLO and cannot, therefore, claim any benefit. In so far as the alleged violation of OM dated 09.08.1999 of DOP&T is concerned, respondents have denied

any such violation and also denied that he has been given wrong pay scale of Rs.14300-18300 instead of the pay scale of the promotional post of CLO having a pay scale of Rs.16400-20000.

Because the **applicant never discharged the duties of the CLO, he cannot be given that pay scale.** Respondents have, therefore, requested for rejection of the OA. Rejoinder has also been filed by the applicant in which the points raised earlier have been repeated.

7. We have heard the learned counsel for the parties, gone through the record and various judgments referred to in arguments.

8. The short point to be considered in this case is whether applicant was ever appointed as CLO in the pay scale of Rs.16400-20000. Nowhere in the OA has the applicant adduced any order vide which it can be found that any such appointment was made. Further, without the copy of any such order, which has been denied by the respondents, there is no way in which his claim to have been appointed as CLO can be substantiated. On principle, if applicant has worked as CLO in the higher pay scale of Rs.16400-20000, he is entitled to allowances on the basis of the judgment in the case of **Selvaraj** (supra). But that fact has to be ascertained by the respondents because they are the custodian of the records and the claim of the applicant has not been substantiated before us, but as custodian of records of the service of the applicant, they should look

into this claim and pass a specific and speaking order with regard to the same.

9. In this view of the matter, we direct the respondents to look into the matter in view of the judgment of Delhi High Court in the case of ***Bharat Sanchar Nigam Ltd.*** (supra) and if it is found that the applicant has performed work on the higher post of CLO in the pay scale of Rs.16400-20000, the respondents may grant him allowances as per rules and also to refix his pension and other benefits since he is a retired employee. This decision will be read in continuation of the earlier decision given in this very OA on 02.01.2014.

10. Necessary exercise to pass a speaking order on the claim of the applicant will be carried out within a period of 3 months from the date of receipt of a copy of this order. No costs.

(NITA CHOWDHURY)
Member (A)

(RAJ VIR SHARMA)
Member (J)

Rakesh