

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

OA-3711/2011

Reserved on : 05.10.2016.

Pronounced on : 07.10.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Sh. Anil Dalal,
Executive Engineer (Civil),
R/o 3402, Mohindra Park,
Shakur Basti, Delhi.

.... Applicant

(through Sh. Rajeev Sharma, Advocate)

Versus

1. Municipal Corporation of Delhi
(Through its Commissioner)
Town Hall, Chandni Chowk,
Delhi.
2. The Commissioner,
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi.
3. Director (Personnel),
Municipal Corporation of Delhi,
Town Hall, Chandni Chowk,
Delhi.

..... Respondents

(through Sh. R.N. Singh, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

Applicant was a regular Assistant Engineer (Civil) in Municipal Corporation of Delhi (MCD) and was assigned current duty charge

of the post of Executive Engineer w.e.f. 01.08.2001. His grievance is that even though he discharged the duties of Executive Engineer, the respondents paid him salary for the post of Assistant Engineer. He, therefore, approached this Tribunal seeking the following relief:-

- “(i) to issue direction to the respondents to calculate difference of salary between the pay of Assistant Engineer (Civil) and Executive Engineer (Civil) w.e.f. 01.08.2001.
- (ii) to issue direction to the respondents to make the payment of the difference of salary as mentioned in prayer No. (i) above with all benefits of the pay scale of Executive Engineer (Civil) and continue to pay salary to the applicant in pay scale of Executive Engineer (civil).
- (iii) to issue direction to the respondents to grant all the consequential benefits to the petitioner.
- (iv) the Hon'ble Court may pass any other order/direction as deemed fit and proper in the circumstances of the present case and in the interest of justice.”

2. This O.A. was allowed by the Tribunal vide order dated 12.03.2011. The operative part of the order reads as follows:-

“8. The principle laid down by the Hon'ble High Court of Delhi has not been disputed by the learned counsel for the respondents. The principle has been laid down that if an employee has shouldered the responsibility of the higher post, then he is entitled for the benefits of the higher post. And the case of the applicant is that he worked as an Executive Engineer while he was holding the post of Assistant Engineer. We made it clear above that we are not considering the case of the applicant for promotion on ad hoc or otherwise on the post of Executive Engineer rather nothing has been alleged that he was entitled for ad hoc promotion, as his junior was given promotion. We are concerned regarding payment of difference of salary to the applicant during the period he shouldered the responsibility of the higher post. We have been stated by the learned counsel for the applicant that still the applicant is working on the post of Executive Engineer. If it is

correct, then the applicant is also entitled for the salary of the Executive Engineer and he will be entitled for the salary till he continues to work on the higher post as Executive Engineer with other consequential benefits, like increments only.

9. For the reasons mentioned above, we are of the opinion that the applicant worked on the post of Executive Engineer w.e.f. 1.8.2001 and still he is working on the same post and he is entitled to the difference of salary of the Assistant Engineer and the Executive Engineer and he will get all consequential benefits like increments only w.e.f. 1.8.2001. The OA deserves to be allowed. The OA is allowed. The respondents are directed to grant him the difference of the salary of Executive Engineer till he continues to work on that post. The respondents are also directed to comply with the order passed by this Tribunal within a period of three months from the date of receipt of a copy of this order. No costs."

3. Thereafter, the order of this Tribunal was challenged by the respondents by means of Writ Petition (C) No. 5960/2013 before Hon'ble High Court of Delhi. The aforesaid Writ Petition was decided on 20.09.2013. The operative part of the order reads as follows:-

"North Delhi Municipal Corporation has challenged the order passed by the Central Administrative Tribunal dated 12.03.2011 whereby the respondent/applicant's claim for higher pay in the post of Executive Engineer, for which he worked w.e.f. 01.08.2011, was directed to be granted. The Corporation argued that the Tribunal's order cannot be held to be justified because the Respondent was placed on current duty charge with specific direction that he would be entitled to the pay emoluments of the substantive grade that he was working in i.e., Assistant Engineer and, that he therefore could not claim the emoluments attached to the higher post in respect of which he was asked to shoulder responsibilities.

This Court has considered the submissions as well as the material on record and previous rulings of the Supreme Court in

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 as well as the decision of the Division Bench 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 which mandates that in addition to ordinary pay, if a public servant is asked to discharge duties and functions attached to a higher post, he would be entitled to the pay and emoluments prescribed for such latter post. The Division Bench of this Court also notices Fundamental Rule 49 which regulates the pay of an individual asked to officiate, on a temporary basis, on independent basis or of higher responsibility. It mandates that in addition to the ordinary pay, the employee shall be allowed the pay admissible to him if he is appointed to officiate in the higher post.

In view of this settled legal position, the Court is of the opinion that there is no merit in the writ petition. It was argued during the course of submissions that the Respondent has a pending disciplinary proceedings and that his promotion has been kept in abeyance on account of the sealed cover procedure adopted and the consequential benefits would have to be understood to mean only the release of pay and emoluments in terms of Rule 49. This issue did not engage the attention of the Tribunal, since it was neither brought to its notice nor put in issue by the Corporation. This Court is of the opinion that it would not be appropriate to comment on its correctness. The Corporation shall be at liberty to initiate such proceedings as may be available to it under law and if any such proceedings / application is moved on the part of the Corporation, the authority / Tribunal shall pass appropriate orders subject to disciplinary proceedings pending, if any. The writ petition is accordingly dismissed."

4. In view of the observations made by Hon'ble High Court of Delhi in the last paragraph of the order, the respondents filed Review Application No. 18/2014 before this Tribunal. The said Review

Application was allowed vide order dated 24.09.2014. The operative part of the aforesaid order reads as follows:-

“7. In view of the specific observation made by the Hon'ble High Court of Delhi, whereunder the respondents were given liberty to initiate appropriate proceedings and further observed that this Tribunal shall pass appropriate orders thereon, we are of the considered view that the R.A. is liable to be allowed and the O.A. is to be heard afresh, including the issue pointed out by the Hon'ble High Court.

8. Accordingly, we allow the R.A., and recall the order dated 12.03.2011 in O.A. No. 3711/2011 by restoring it to its original file and direct the Registry to list the O.A. for fresh hearing on 13.11.2014.”

The O.A. was accordingly restored and was heard afresh by us.

5. During the course of the arguments, learned counsel for the respondents produced a copy of Office Order dated 02.08.2016 by which the applicant has been granted notional promotion as Executive Engineer w.e.f. 08.09.2008. On the basis of the aforesaid order, learned counsel claimed that the O.A. has become infructuous.

6. This position was, however, disputed by learned counsel for the applicant. He argued that the applicant's O.A. was for claiming salary of the post of Executive Engineer. Since the respondents have allowed only notional promotion to the applicant, he would not get the benefit of arrears. Moreover, this notional promotion has been allowed w.e.f. 08.09.2008 whereas the applicant is claiming salary of

the post of Executive Engineer w.e.f. 01.08.2001. Finding merit in the arguments advanced by learned counsel for the applicant, we have proceeded to hear the O.A. afresh.

7. Learned counsel for the applicant argued that the issue involved in this O.A. has already been decided by this Tribunal vide its order dated 12.03.2011. This order was also upheld by Hon'ble High Court of Delhi in Writ Petition No. 5960/2013 as is evident from the extracts of that order mentioned above. It was only on the submission of the respondents that a disciplinary enquiry was pending against the applicant, that Hon'ble High Court of Delhi had given liberty to the respondents to file a review application before the Tribunal. When such a review application was filed, the Tribunal also allowed the same only on the basis of observations made by the Hon'ble High Court of Delhi in Writ Petition. Thus, as far as merits of the case are concerned, the findings of the Tribunal still stand and have also been upheld by the Hon'ble High Court of Delhi. Further, now it is not disputed that the disciplinary case, which was pending against the applicant, has since been closed and the respondents have even granted notional promotion to the applicant. Hence, the basis on which review application was allowed to be filed by Hon'ble High Court of Delhi and entertained by this Tribunal no longer exists. Consequently, the findings of the Tribunal as upheld by Hon'ble High Court of Delhi should now be given effect to.

8. Per contra learned counsel for the respondents Sh. R.N. Singh argued that once Hon'ble High Court of Delhi has permitted the respondents to file review application and once the review application has been allowed by this Tribunal, the earlier orders passed by the Tribunal as well as Hon'ble High Court of Delhi do not survive any more. Hence, the applicant's claim that earlier findings of the Tribunal as upheld by Hon'ble High Court of Delhi be given effect to is not sustainable.

9. We have heard both sides and have perused the material placed on record. In our view, the main issue to be adjudicated in this case was whether an officer, who has discharged duties of a higher post for considerable period, be also given benefit of salary of that post or not. The Tribunal after considering various aspects of the matter and also after placing reliance on the judgment of Hon'ble High Court of Delhi in Writ Petition (C) No. 5818/2001 had held that the applicant herein was also entitled to the difference in salary between the post of Executive Engineer and Assistant Engineer. When this matter was challenged before Hon'ble High Court of Delhi vide Writ Petition No. 5960/2013, Hon'ble High Court of Delhi after considering previous ruling of Hon'ble Supreme Court in the case of **Selvaraj Vs. Lt. Governor, Port Blair and Ors.**, 1998(4)SCC 291; **Judhistir Mohanty Vs. State of Orissa and Ors**, 1996(VIII) AD(SC) 733 as well as a decision of Division Bench of Hon'ble High Court of Delhi in the

case of **Govt. of NCT of Delhi and Ors. Vs. Shri S.C. Gupta and Ors.**, (WP(C) No. 724/2010) dated 06.09.2010 had held that if a public servant was asked to discharge duties and functions attached to a higher post, he would be entitled to the pay and emoluments prescribed for such post. Hon'ble High Court also took note of FR-49 which regulates the pay of an individual asked to officiate, on a temporary basis on a higher post. In our opinion, these findings of the Tribunal as well as Hon'ble High Court of Delhi still stand and have not been controverted by any judicial order. Further, the applicant has also relied on a judgment of Co-ordinate Bench of this Tribunal in the case of **Sh. Rama Shankar Bharti Vs. East Delhi Municipal Corporation & Ors.** (OA-1296/2012) dated 26.07.2016 on the same issue.

10. In view of the above, we are inclined to agree with the applicant and allow this O.A. Accordingly, we direct that the applicant be paid difference of salary between the pay of Assistant Engineer and Executive Engineer w.e.f. 01.08.2001 for the entire period for which the applicant has discharged duties of Executive Engineer on current duty charge. This payment shall be made for the entire period including the period of notional promotion of the applicant commencing from 08.09.2008 till the date of his regular promotion i.e. 02.08.2016. The aforesaid payment be made to the

applicant within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/