

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

O.A. No.3055/2015  
M.A. No.2680/2015  
M.A. No.2681/2015

Reserved on: 09.01.2018  
Pronounced on: 25.01.2018

**HON'BLE MR. V. AJAY KUMAR, MEMBER (J)  
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

1. Hukam Singh  
(Post - Gardener)  
S/o Shri Lekhi Ram  
Aged 62 years  
R/o B-287, Palam Extension Part-1,  
Sector-7, Dwarka,  
New Delhi-110077.
  2. Mansa Ram (Post - Gardener)  
Aged 61 years  
S/o Late Shri Sampat  
R/o 15/216, Dakshin Puri Extension,  
New Delhi-110062.
  3. Karan Singh (Post - Gardener)  
Aged 58 years  
S/o Late Shri Lal Singh  
R/o G-103, Phase 6,  
Aaya Nagar Extension,  
New Delhi.
- ... Applicants

(By Advocate: Shri Ajesh Luthra)

Versus

1. Central Public Works Department,  
Through Director General (Works)  
Nirman Bhawan,  
New Delhi.
2. Union of India,  
Ministry of Urban Development,  
Through Secretary (Urban Development),  
Nirman Bhawan, New Delhi.

3. Director of Horticulture (New Delhi Region)  
Central Public Works Department,  
Horticulture Circle,  
C-117, Ist Floor, Indraprastha Bhawan,  
New Delhi-110002.
4. The Deputy Director (Horticulture),  
Division No.4,  
Central Public Works Department,  
I.P. Bhawan, New Delhi. ... Respondents

(By Advocate: Shri Piyush Gaur)

### **ORDER**

**By Mr. V. Ajay Kumar, Member (J)**

The applicants, three in number, filed the O.A. seeking a direction to the respondents to grant all consequential pensionary benefits including promotions and financial benefits from the date of his junior Shri Mool Chand's promotion in accordance with the order dated 22.09.2011 in OA No.1328/2010.

2. In connection with a strike, a Criminal Case was registered against the applicants and, accordingly, they were dismissed from service w.e.f. 15.03.1986 by an order dated 24.03.1986. However, by order dated 04.10.1986, the said dismissal order was revoked and the applicants were ordered to be under deemed suspension until further orders.

3. When the respondents continued the applicants under deemed suspension for a long period without reinstating them into

service, the applicants filed O.A. No. 1328/2010. The said O.A. was disposed of by order dated 22.09.2011 (Annexure A-3) and the relevant paragraphs of the same, which are necessary for the purpose of disposal of the present O.A., are extracted as under:

“This is a classical case where the functionary of the Government has shown inability to take action against three employees, who have beaten up their superior, which led to lodging of the FIR against them and ultimately convicted by the trial court, which conviction, though modified, was also upheld by the appellate court. Pursuant to the judgment rendered by the trial court whereby the conviction of the applicants was upheld, the applicants were dismissed from service vide the order dated 24.3.1986 w.e.f. 15.3.1986, which order was superseded vide another order dated 4.10.1986 whereby the applicants were deemed to have been placed under suspension w.e.f. 15.3.1986 till further orders. It is this order, which is under challenge before this Tribunal and the applicants have prayed for the following reliefs:-

- “(a) To direct the respondents to reinstate the applicants and also pay entire back wages, Seniority, Promotion and other benefits.
- (b) An order allowing the cost in favour of the applicants and against the respondents.
- (c) Any other order in favour of the applicants which this Hon’ble Tribunal deem fit and Proper.”

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5. Be that as it may, the respondents-department under the pressure of the union superseded the order of the dismissal to that of deemed suspension w.e.f. 15.3.1986. At this stage, it will be useful to quote the relevant portion of impugned order dated 4.10.1986, which thus reads:

“Order -

In supersession to this office order No.10 (15) /86-HSD/1468-74 dated 24.3.86, Shri Karan Singh, S/O Shri Lal Singh, Mali deem to have suspended from the date of his dismissal from service i.e. 15.3.86 and will be remain under suspension till further order.

These orders are issued as per agreement arrived between Central P.W.D., Mazdoor Union and Director and Directorate General of Works, Central P.W.D., New Delhi, Communicated to this office vide his office Memorandum No.9/10/85-EC-V dated 12.9.86.”

6. It may be relevant to state here that the aforesaid order could have been passed if the respondents have thought to initiate disciplinary proceedings against the applicants or to take any other further action based upon their conviction otherwise a person cannot be placed under suspension. From the material placed on record, it is evident that the respondents have not taken any action against the applicants pursuant to the impugned order dated 4.10.1986 and rather they have made payment of subsistence allowance to the applicants from Government exchequer for a period of about 25 years. According to us, such an action on part of the functionary of the Government cannot be condoned, which has caused substantial loss to the Government exchequer without taking any work from the applicants. We are also shocked to notice that even the respondents in their reply affidavit have shown their helplessness to take action against the applicants. Rather the respondents in their reply, relevant portion of which has been reproduced above, have stated that even on 2.8.2000 the Deputy Director (Hort.) has recommended dismissal of all these officials but the matter has been kept under cold storage in the garb of consideration and no action has been taken even after a lapse of 11 years. Thus, according to us, there may be some officers in the Department, who are extending undue favour/benefit to the applicants not by oversight but deliberately may be convincing with them, by placing them under suspension and thereby making payment of subsistence allowance from the Government exchequer against the defaulting officials. It is stated here that either the action against the applicants could have been taken to the logical end or in case the Department did not want to take any action against the applicants, in that eventuality, they should have been reinstated, so that the appropriate works could have been taken from them. Be that as it may, we have no option but to hold that the applicants cannot be kept under suspension for indefinite period, more particularly in view of the mandate contained in Sub-Rule (vii) of Rule 10 of CCS (CCA) Rules, 1965.

7. Accordingly, the present OA is disposed of and the respondents are directed to reinstate the applicants forthwith. However, in the facts and circumstances of the case, we are of the view that the applicants shall not be entitled to payment of back-wages, as the impugned order dated 4.10.1986, whereby they have been placed under suspension, has been challenged by them after a lapse of about 25 years. Further in the peculiar circumstances of the present case, we are of the considered view that the period of deemed suspension shall be treated as period spent on duty only for the purpose of pensionary benefits and not for any other purpose.

8. Let a copy of this order be sent to the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi to probe into the matter and fix the responsibility upon the officers, who are responsible for this entire lapse, which has resulted into the

payment of subsistence allowance to the applicants for a period of about 25 years without taking any work from them. No costs.”

4. In compliance of the aforesaid orders, the applicants were reinstated into service and on their retirement, the respondents have fixed their pension as per the rules and as per the aforesaid orders of this Tribunal.

5. Heard Shri Ajesh Luthra, the learned counsel for the applicants and Shri Piyush Gaur, the learned counsel appearing for the respondents and perused the pleadings on record.

6. MA 2680/2015 filed for joining together and MA 2681/2015 filed for seeking exemption are allowed.

7. Shri Ajesh Luthra, the learned counsel appearing for the applicants, would submit that once the respondents reinstated the applicants into service and once this Tribunal ordered that the period of deemed suspension shall be treated as period spent on duty, they are entitled for fixation of their pay for the purpose of granting the pension by granting all the consequential promotions and financial benefits entitled by them by virtue of their long service.

8. On the other hand, the learned counsel for the respondents, while submitting that they have treated the entire period of deemed

suspension as spent on duty and they have also fixed the pension of the applicants as per the orders of this Tribunal dated 22.09.2011 in O.A. No.1328/2010 and, accordingly, prays for the dismissal of the present O.A.

9. A careful perusal of the order dated 22.09.2011 in O.A. No. 1328/2010, on which both the learned counsel placed heavy reliance, clearly indicates that though the applicants sought for granting of entire back wages, seniority, promotion and other benefits, this Tribunal only directed the respondents to reinstate the applicants and to treat the period of deemed suspension as period spent on duty only for the purpose of pensionary benefits and not for any other purpose. Therefore, the applicants cannot contend that they are entitled for any promotions/financial benefits by counting their deemed suspension period for fixation of their pension. Once the respondents counted the period of deemed suspension as spent on duty for the purpose of pensionary benefits, as directed by this Tribunal in the aforesaid O.A., we do not find any illegality in the action of the respondents.

10. Since the entire case of the applicants is depending on the orders of this Tribunal in O.A. No.1328/2010 dated 22.09.2011, the decision in Dilip Wagheshwari vs. Union of India & Ors. in O.A. No. 2901/2015 dated 01.12.2017, on which the learned counsel for the

applicants placed reliance, has no application to the facts of the present case.

11. In the circumstances and for the aforesaid reasons, we do not find any merit in the O.A. and, accordingly, the same is accordingly dismissed. No costs.

**(NITA CHOWDHURY)**  
**Member (A)**

**(V. AJAY KUMAR)**  
**Member (J)**

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