

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.3178 OF 2014
New Delhi, this the 20th day of January, 2017

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND
HON'BLE SHRI K.N.SHRIVASTAVA, ADMINISTRATIVE
MEMBER**

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1. Smt. Tejo w/o Sh.Gainda Lal,
r/o B-115, Tigri Extension,
New Delhi 110062,
Employee ID: 16189,
Unique ID: 4716189,
Age 56 years,
Post: Mali

2. Smt. Savitri, w/o Sh.Mahavir,
R/19-B Chirag Delhi,
New Delhi 110017,
Employee ID: 1606989,
Unique ID: 4716069,
Age 58 years,
Post: Mali

3. Smt. Prem w/o Sh.Sukh Chand,
r/o H.163, JJ Colony, Tigri Extn.,
New Delhi 110062
Employee ID: 34004,
Unique ID: 4734004,
Age 57 years,
Post: Mali

4. Smt.Bhori w/o Nanak Chand,
R/o H.2, JJ Colony, Tigri,
New Delhi 110062,
Employee ID: 9015,
Unique ID: 4709015,

Age 57 years,

Post: Mali

5. Smt. Sammo w/o Sh.Ranvir,
r/o F-276, Laddo Sarai,
New Delhi 110030,
Employee ID: 25019,
Unique ID: 4725019,
Age 57 years,
Post: Mali

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Respondents

(By Advocate: Ms.Maldeep Sidhu)

Vs.

1. The Commissioner (Personnel),
Horticulture Division,
Delhi Development Authority,
Vikas Sadan, INA, New Delhi 110023
2. The Director (South),
Horticulture Division,
Delhi Development Authority,
Vikas Minar, Indraprastha Estate, ITO, New Delhi 110002
3. The Deputy Director,
Delhi Development Authority,
Horticulture Division-6,
Sheikh Sarai, Phase 1,
New Delhi 110017
4. The Director ó Work Charge,
Horticulture Division,
Delhi Development Authority,
Vikas Minar, Indraprastha Estate,
ITO, New Delhi 110002

Respondents

(By Advocate: Ms.Sriparna Chatterjee)

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ORDER**Per Raj Vir Sharma, Member(J):**

The applicants have filed this O.A. seeking the following reliefs:

- ñi) pass any appropriate order or direction in favour of the petitioners and against the respondents thereby directing the respondents to take notice of their personal files and correct their service records to read against their names, the posts as those of öMALIö and not that of öCOOLIEö as was wrongly recorded in the year 1983 due to an error of the clerks, against the appointment letters of the petitioners, where they were appointed as öCOOLIEö instead of öMALIö.
- ii) pass such further directions to release to the petitioners all arrears, increments, ACP benefits etc. as may have accrued to them in the past, in parity with those who also joined as öMALIö, at the same post and at the same time, as the petitioners. The respondents may further be directed to produce the records of the petitioner's service and conditions of service.
- iii) Any other further order or relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed/granted in favour of the petitioners and against the respondents.ö

2. Resisting the O.A., the respondents have filed a counter reply.

The applicants have also filed a rejoinder reply thereto.

3. We have perused the records, and have heard Ms.Maldeep Sidhu, the learned counsel appearing for the applicants, and Ms.Sriparna Chatterjee, the learned counsel appearing for the respondents.

4. The undisputed facts of the case are that the applicants were initially engaged on Muster Roll. Subsequently, they were appointed as

Malis in the Work Charged Establishment, vide EO No.218 dated 29.9.1983.

They were issued appointment letters by the Deputy Director (Hort.), Horticulture Division-VI, DDA, for the post of Malis in the pay scale of Rs.196-3-220-EB-3-232/- with effect from 6.1.1983. At the time of preparation of their Service Books, the Clerks had mistakenly written the applicants' post as :-Collie instead of :-Mali. Prior to implementation of the recommendations of the 6th Pay Commission, the pay scale of Mali and Coolie was Rs.196-3-220-EB-3232/-. It was only on 10.2.2011 that the applicants, for the first time, made a representation to the respondents for correcting the errors in their Service Books. In pursuance thereof, orders were issued by the Deputy Director, Horticulture, Division-VI, to correct the errors in the Service Books of the applicants and all other office records, and also to grant them the benefits under the ACP Scheme. As the Service Books of the applicants and all other office records were not corrected and the applicants were not paid the arrears of pay and allowances, ACP benefits, etc., a legal notice dated 17.4.2014 was served on the respondents.

5. In the background of the above undisputed facts, it has been contended by the applicants that the respondents have acted illegally and arbitrarily in not correcting their relevant service records, including their Service Books, and in not granting them arrears of pay and allowances, and benefits under the ACP Scheme with effect from due dates.

6. *Per contra*, it has been contended by the respondents that the claim of the applicants is barred by the law of limitation. Therefore, the applicants are not entitled to the reliefs claimed by them.

7. In **M.R.Gupta Vs. Union of India**, AIR 1996 SC 669, the Hon'ble Supreme Court has held that the appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It has also been held that the claim to be paid the correct salary computed on the basis of proper pay fixation is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished.

8. Having considered the facts and circumstances of the case in the light of the decision of the Hon'ble Supreme Court in *M.R.Gupta Vs.*

Union of India (supra), we are not inclined to accept the respondents' plea of delay and laches.

9. In the result, the O.A. is allowed. The respondents are directed to correct the Service Books and all other official records by showing the applicants to have been appointed as Malis, and to grant them all service benefits, like pay fixation, increments, financial upgradations under the ACP Scheme, etc., as admissible under the Rules, at par with those who joined as Malis during the relevant point of time. The respondents shall comply with the directions contained in this order within three months from today. No costs.

**(K.N.SHRIVASTAVA)
ADMINISTRATIVE MEMBER**

**(RAJ VIR SHARMA)
JUDICIAL MEMBER**

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