

**Central Administrative Tribunal
Principal Bench**

OA No.2693/2018
MA No.3006/2018
with
OA No.2557/2017
OA No.827/2016
OA No.2598/2013
OA No.3442/2013
OA No.3465/2013

Reserved on : 14.03.2019
Pronounced on : 24.04.2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. A. K. Bishnoi, Member (A)
Hon'ble Mr. Pradeep Kumar, Member (A)

OA No.2693/2018

Lokpal Singh Negi (Retired Principal)
Age 65 years, S/o late B. S. Negi,
R/o 131-B, Sunder Apartments,
Paschim Vihar, New Delhi.
Last posting at: Officiating Principal,
Gurunanak Dev Institute of Technology,
Rohini, Sector 15, Delhi.

... Applicant

(By Mr. Saurabh Ahuja, Advocate)

Versus

1. GNCT of Delhi through its Chief Secretary,
Players Building, I.P. Estate,
New Delhi-110002.
2. Principal Secretary/Secretary,
Directorate of Training and Technical Education,
GNCT of Delhi, Muni Maya Ram Marg,
Pitampura, Delhi.

3. Director,
Directorate of Training and Technical Education,
GNCT of Delhi, Muni Maya Ram Marg,
Pitampura, Delhi. ... Respondents

(By Ms. Esha Mazumdar, Ms. Harvinder Oberoi, Advocates)

OA No.2557/2017

- R. K. Sabharwal, Rt. Chief Engineer, Age-69
S/o Radha Krishan,
R/o C-32, New Multan Nagar,
Rohtak Road, New Delhi-56. ... Applicant

(By Mr. Rajeev Sharma, Advocate)

Versus

1. The Commissioner,
South Delhi Municipal Corporation,
9th Floor, Civic Centre, JLN Marg,
New Delhi-110002.
2. The Commissioner,
North Delhi Municipal Corporation,
4th Floor, Civic Centre, JLN Marg,
New Delhi-110002. ... Respondents

(By Mr. R. V. Sinha, Mr. Amit Sinha, Mr. R. K. Jain, Mr. Vaibhav Pratap Singh, Mr. Sharanya Singh, Advocates)

OA No.827/2016

- R. S. Meena, Dy. Commissioner, Age 56 years,
S/o Mam Raj Meena,
49/1, Bungalow Road,
Kamla Nagar, Delhi. ... Applicant

(By Mr. Rajeev Sharma, Advocate)

Versus

1. The Commissioner,
North Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre,
4th Floor, JLN Marg, New Delhi.
2. The Additional Commissioner (Estt.),
North Delhi Municipal Corporation,
Central Establishment Department,
Dr. S.P. Mukherjee Civic Centre,
4th Floor, JLN Marg, New Delhi.
3. Director (Personnel),
North Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre,
4th Floor, JLN Marg, New Delhi. ... Respondents

(By Mr. R. V. Sinha, Mr. Amit Sinha, Advocates)

OA No.2598/2013

1. Birpal Singh S/o late Ram Gopal Singh,
R/o 1/6443, Street No.5,
East Rohtas Nagar, Shahdara,
Delhi-110032.
2. Lallan Yadav S/o Rajender Yadav,
R/o 475, Gulabi Bagh, Type-I,
Delhi-110007.
3. Satish Kumar S/o Hira Lal,
R/o F-29, Faridkot House,
Copernicus Marg, New Delhi.
4. Munna Lal S/o late Raja Ram,
R/o 13/10, Gali No.10, East Azad Nagar,
Near Dwarkadhish Mandir,
Delhi-110051. ... Applicants

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

Versus

Govt. of NCT of Delhi & Ors. through

1. The Chief Secretary,
Government of NCT of Delhi,
IP Estate, New Delhi.
2. The Secretary,
Department of Health & Family Welfare,
9th Floor, Delhi Secretariat,
IP Estate, Delhi.
3. The Director,
Directorate of ISM&H,
GNCT of Delhi,
Tibbia College, Karol Bagh,
New Delhi.

... Respondents

(By Mr. Kapil Agnihotri, Advocate)

OA No.3442/2013

Mrs. Krishna Sharma W/o Hari Mohan,
Village & Post: Chhawla,
Near Shiv Mandir,
New Delhi-110071.

... Applicant

(By Mr. Animesh K. Sharma, Mr. R. K. Yadav, Mr. S. K. Tripathi, Advocates)

Versus

1. North Delhi Municipal Corporation
through its Commissioner,
Civic Centre, Minto Road,
New Delhi-110002.

2. South Delhi Municipal Corporation
through its Commissioner,
Civic Centre, Minto Road,
New Delhi-110002. ... Respondents

(By Mr. R. K. Jain, Mr. R. V. Sinha, Mr. Amit Sinha, Mr. K. M. Singh, Advocates)

OA No.3465/2013

Mrs. Krishna Chhikara W/o Rajinder Singh Chhikara,
Additional Director (Education) (Retired),
DP-245, Pitam Pura, Maurya Enclave,
Delhi-110034. ... Applicant

(By Mr. Animesh K. Sharma, Mr. R. K. Yadav, Mr. S. K. Tripathi, Advocates)

Versus

North Delhi Municipal Corporation
through its Commissioner,
Civic Centre, Minto Road,
New Delhi-110002. ... Respondent

(By Mr. R. K. Jain, Mr. R. V. Sinha, Mr. Amit Sinha, Mr. K. M. Singh, Advocates)

O R D E R

Justice L. Narasimha Reddy, Chairman:

In this batch of OAs, the applicants were either put on the “look after charge” of higher posts, or were required to attend to certain duties attached to such posts. They made claims for payment of the salary and other emoluments, payable for such higher posts. Since their claims were not accepted, they filed the OAs for the relief, in the form of directions to pay the amounts representing the difference between the salary attached to such post and what was already paid to them. In certain cases, consequential benefits, such as counting the service vis-à-vis the higher post are also prayed for. Reliance is placed by the applicants on the order dated 07.10.2016 passed by this Tribunal in OA No.3711/2011, wherein such claims were allowed.

2. One of the OAs in the present batch, i.e., OA No.2557/2017, came up for hearing on 29.10.2018 before a Bench of which, one of us (Chairman) was a Member. It was noticed that in the order dated 11.11.2003, through which the applicant therein was assigned the ‘look after charge’ of the post of Chief Engineer (CE), several conditions, including the

one that the applicant shall not be entitled to draw any salary in addition to what he draws for the substantive post, were incorporated. It was also noticed that OA No.3711/2011 was decided by placing reliance upon the judgments of the Hon'ble Supreme Court in *Selvaraj v Lt. Governor, Port Blair & others* [(1998) 4 SCC 291], and *Judhistir Mohanty v State of Orissa & others* [(1996) 10 SCC 531], and a judgment of the Delhi High Court in *Government of NCT of Delhi & others v S. C. Gupta & others* [WP(C) No.724/2010, decided on 06.09.2010]; and that a close scrutiny thereof does not indicate that any principle of that nature, covering all the situations having been laid down. On finding that a serious debate is necessary to decide whether the salary attached to the post of CE can be extended to the applicant, it was felt that the judgment in OA No.3711/2011 needs to be re-considered. In the light of that, the matter was referred to a Full Bench, through an administrative order.

3. The facts which are common to this batch of OAs are that each of the applicants held a particular substantive post, but their employers have kept them in look after charge of higher posts. In certain cases, the arrangement is slightly

different. Placing reliance upon FR 49, they claim wages attached to the higher post.

4. The respondents, on the other hand, pleaded that the applicants were entrusted with the look after charge as a stop-gap-arrangement, and even if it was extended for some period on account of difficulties in filling the higher posts on regular basis, no right had accrued to them, to claim the salary attached to the higher posts. It is stated that the right to claim salary attached to a post would arise if only the incumbent is appointed to it in accordance with the prescribed procedure, and on recommendation by a validly constituted DPC. It is stated that in many cases, the applicants were not even holding the lower posts, such as Superintending Engineer (SE), in a substantive capacity, and the question of paying them the scale of pay attached to the post of CE, does not arise.

5. Arguments in this batch of the OAs were advanced by Shri Sourabh Ahuja, Shri Rajeev Sharma, Shri M. K. Bhardwaj and Shri Animesh K. Sharma, learned counsel for the applicants; and Shri R. V. Sinha, Ms. Harvinder Oberoi, Ms. Esha Mazumdar, Shri R. K. Jain, and Shri Kapil Agnihotri, learned counsel for the respondents.

6. Through office order dated 11.11.2003, the applicant in OA No.2557/2017, was put in 'look after charge' of the post of CE(C). It reads as under:

"Shri R. K. Sabharwal, Supdt. Engg (Civil) on ad hoc basis, is hereby assigned the Look After Charge to the post of Chief Engg (Civil) in his own pay scale with immediate effect till further orders.

The above arrangement is subject to the following terms and conditions:-

- (i) The assignment is subject to the undertaking by the officer that he will not claim any undue benefit on this account;
- (ii) The appointment shall be purely on look after charge basis, as a matter of stop gap arrangement and shall not entitle the officer to claim any benefit on account of this order;
- (iii) The officer will draw his salary in his own pay scale and will not claim any additional pay/benefits for assignment of look after charge to the post of Chief Engineer (C);
- (iv) It will not confer any right to claim ad hoc/regular promotion or seniority to this post or any other service benefits whatsoever;
- (v) The period of service rendered on look after charge will not count as qualifying service for promotion to the higher grade/post for seniority;
- (vi) This stop-gap arrangement can be terminated at any time by the competent authority without assigning any reason therefor and giving any prior notice; and
- (vii) This look after arrangement is also subject to outcome of any court case pending which has effect on this order.

2. Consequent upon assigning look after charge, Sh. R. K. Sabharwal is hereby directed to report to Engg-in-Chief for further duties.

This issues with the approval of the Commissioner."

From this, it is evident that the applicant was holding the post of SE(C) on *ad hoc* basis, and he was yet to be appointed on regular basis on that post. It was only on account of administrative exigencies, that he was assigned the look after charge of the post of CE(C), lest the said office remained unattended to. The conditions incorporated therein are clear to the effect that he shall not be entitled to claim any benefit on account of such arrangement, and that he shall continue to draw the salary in the post which he is holding in substantive capacity.

7. OA No.3711/2011 was allowed by placing reliance upon the judgment of the Hon'ble Supreme Court in *Selvaraj v Lt. Governor, Port Blair & others*, and *Judhistir Mohanty v State of Orissa & others*, and a judgment of the Delhi High Court in *Government of NCT of Delhi & others v S. C. Gupta & others*. On behalf of the respondents, it is argued that in none of the judgments referred to above, any clear proposition to the effect that a person holding a look after charge shall be entitled

to be paid the pay scale attached to the post, was laid down, and that the relief was claimed mostly on facts. They also place reliance upon Fundamental Rule (FR) 49 (v). The provision reads as under:

“F.R. 49. The Central Government may appoint a Government servant already holding a post in a substantive or officiating capacity to officiate, as a temporary measure, in one or more of other independent posts at one time under the Government. In such case, his pay is regulated as follows:-

- (i) Where a Government servant is **formally appointed** to hold full charge of the duties of a higher post in the same office as his own and in the same cadre/line of promotion, in addition to his ordinary duties, he shall be allowed the pay admissible to him, if he is appointed to officiate in the higher post, unless the competent authority reduces his officiating pay under Rule 35; but no additional pay shall, however, be allowed for performing the duties of a lower post (*emphasis added*);
- (ii) Where a Government servant is formally appointment to hold dual charge of two posts in the same cadre in the same office carrying identical scales of pay, no additional pay shall be admissible irrespective of the period of dual charge:

Provided that, if the Government servant is appointed to an additional post which carries a special pay, he shall be allowed such special pay;

- (iii) Where a Government servant is formally appointed to hold charge of another post or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of

promotion, he shall be allowed the pay of the higher post or of the highest post if he holds charge of more than two posts in addition to ten percent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 45 days but not exceeding 3 months:

Provided that if in any particular case it is considered necessary that the Government servant should hold charge of another post or posts for a period exceeding 3 months, the concurrence of the Department of Personnel and Training shall be obtained for the payment of the additional pay beyond the period of 3 months;

- (iv) where an officer is formally appointed to hold full additional charge of another post, the aggregate of pay and additional pay shall in no case exceed Rs.80,000;
- (v) no additional pay shall be admissible to a Government servant who is appointed to hold current charge of the routine duties of another post or posts irrespective of the duration of the additional charge;
- (vi) if compensatory or sumptuary allowances are attached to one or more of the posts, the Government servant shall draw such compensatory or sumptuary allowances as the Central Government may fix:

Provided that such allowances shall not exceed the total of the compensatory and sumptuary allowances attached to all the posts."

8. Two aspects become clear from this. The first is that it is only when a Government servant is formally appointed in a substantive or officiating capacity, as a temporary measure, to

another independent post to hold full charge, that he shall be entitled to be paid the salary attached to the “other independent post” [FR 49(i)]. The second is that if the appointment is on “current charge” of the routine duties of another post, no additional pay is admissible [FR 49(v)]. It is not even pleaded that the applicants in these OAs were formally appointed (in substantive or officiating capacity as a temporary measure), to hold full charge of the duties of the higher post. On the other hand, it was ‘look after’ arrangement. Therefore, it is not clause (i), but clause (v) of FR 49, that gets attracted.

9. In *Selvaraj*’s case, the appellant therein was no doubt put in look after duties of the post of Secretary (Scouts). However, it is important to take note of the conditions incorporated in the order of such entrustment. On 28.01.1992 the concerned authority passed the following order:

“The Director of Education, A & N Islands is pleased to order the transfer to Shri Selveraj, Primary School Teacher attached to Middle School, Kanyapuram to Directorate of Education (Scouts Section) to look after the duties of Secretary (Scouts) with immediate effect. His pay will be drawn against the post of Secretary (Scouts) under GFR 77.”

From this, it becomes clear that not only the appellant was assigned the look after duties of the post of Secretary (Scouts), but also he was extended the facility and benefit of drawing the salary against that post, under GFR 77. When the appellant therein was not paid the salary in terms of that very order, the Hon'ble Supreme Court granted the relief. Such is not the case here.

10. In *Judhistir Mohanty's* case, that facts are that the appellant was working as Superintendent of Jail, in leave reserve, in the head office of IG (Prisons), and on a representation made by him to the Chief Minister expressing his difficulties, he was transferred and posted as Superintendent of Jail at Circle Jail at Behrampur, in the pay scale of Rs.850-1450. After retirement, the appellant claimed that the post against which he was working at Behrampur carried a higher scale of pay, but he was not extended the benefit thereof. The plea of the Government was that the appellant was holding a Class II post, and since that was not available at Behrampur, he was permitted to work in the post of Superintendent of Jail, which is a Class I post, and in that view of the matter, he is not entitled to the higher scale of pay.

The writ petition was dismissed, and in appeal, the Hon'ble Supreme Court held as under:

"5. ...We are in agreement with Shri Misra, learned counsel for the State. It is a settled position that if the Government, for want of candidate, directs an officer in the lower cadre to perform the duties of the post in the higher cadre, during that period, necessarily, the incumbent would be entitled to the payment of the salary attached to the post if the incumbent had performed the duties in that post. Similarly where the officer concerned is on promotion from lower cadre to the higher cadre, though on ad hoc or even temporary basis, the incumbent would be entitled to the payment of the salary attached to the post for the period of his discharging the duty in that post. In this case, neither would be applicable...."

11. Another judgment which was relied upon is the one in *Government of NCT of Delhi & others v S. C. Gupta* (supra). The Hon'ble High Court did not refer to any specific provision of law, or any binding precedent. At any rate, the purport of FR 49(v) was not taken note of.

12. Learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in *Col. B. J. Akkara v Government of India & others* [(2006) 11 SCC 709] in support of their contention that the mere fact that an order or judgment of the High Court assumed finality on account of it not having been appealed in time, does not preclude the examination of the same at a later point of time. We are,

however, of the view that such a facility can be availed before the Supreme Court, and we do not intend to undertake an exercise of that nature, vis-à-vis the judgment of the Delhi High Court in *S.C. Gupta's* case. We can, however, apply that principle to the one in respect of OA No.3711/2011, and it is permissible to examine whether it accords with the settled principle of law. On a close scrutiny, we find that the view taken therein militates against the purport of FR 49, and that it has no other legal support.

13. The concept of equal-pay-for-equal-work would also not come into play. The Hon'ble Supreme Court in *State of Haryana & others v Charanjit Singh & others* [(2006) 9 SCC 321], held as under:

"19. Having considered the authorities and the submissions we are of the view that the authorities in the cases of *Jasmer Singh* [(1996) 11 SCC 77 : 1997 SCC (L&S) 210 : AIR 1997 SC 1788 : (1997) 2 LLJ 667], *Tilak Raj* [(2003) 6 SCC 123 : 2003 SCC (L&S) 828], *Orissa University of Agriculture & Technology* [(2003) 5 SCC 188 : 2003 SCC (L&S) 645 : (2003) 2 LLJ 968] and *Tarun K. Roy* [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] lay down the correct law. Undoubtedly, the doctrine of "equal pay for equal work" is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work" has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped

together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. The very fact that the person has not gone through the process of recruitment may itself, in certain cases, make a difference. If the educational qualifications are different, then also the doctrine may have no application. Even though persons may do the same work, their quality of work may differ. Where persons are selected by a Selection Committee on the basis of merit with due regard to seniority a higher pay scale granted to such persons who are evaluated by the competent authority cannot be challenged. A classification based on difference in educational qualifications justifies a difference in pay scales. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus normally the applicability of this principle must be left to be evaluated and determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a

court, the court must first see that there are necessary averments and there is a proof. If the High Court is, on basis of material placed before it, convinced that there was equal work of equal quality and all other relevant factors are fulfilled it may direct payment of equal pay from the date of the filing of the respective writ petition. In all these cases, we find that the High Court has blindly proceeded on the basis that the doctrine of equal pay for equal work applies without examining any relevant factors."

14. It is not uncommon in any organisation that posts of certain description remain vacant for one reason or the other, and certain measures taken, to handle them. The effort would be to ensure that the post is held by someone, for smooth functioning of the organisation. The entrustment of the duties of the higher office to an employee in the lower post is in fact part of the departmental discipline. The occasion to pay the salary attached to the higher post would arise if only an order formally appointing an officer in that behalf is issued. If the duties of a higher post are a bit onerous, the employee who is required to handle it, can be provided the benefit of the special allowances attached to that post, but not the scale of pay.

15. It is axiomatic that the entitlement to receive a pay scale attached to a post would arise if only one is appointed to it in accordance with the prescribed procedure. The appointment to the post of CE in the respondent organisation is

through the process of selection, from the category of SEs, who have put in, the prescribed length of service as SEs in substantive capacity. We have seen that in OA No.2557/2017, the applicant was holding the post of SE on *ad hoc* basis. When he did not even become eligible to be considered for promotion to the post of CE, the question of extending him the benefit of the pay scale attached to that post simply because he was assigned the look after duties of that post, does not arise. It is a different matter, if an order that fits into FR 49(i) is issued in his favour. In none of the OAs, we find any orders of that nature. On the other hand, the arrangements squarely fit into FR 49 (v). Hence, their claims cannot be sustained.

16. We are of the view that if the entrustment of the duties of a higher post continues for a period exceeding three months, a claim can be made by the applicants for payment of the special allowances, if any, attached to the higher post. The respondents shall be under an obligation to consider the same.

17. We, therefore, hold that the view taken in OA No.3711/2011 does not accord with FR 49 and the settled principles of law, and that an employee holding a post in substantive capacity, but assigned the look after charge of a

higher post, shall not be entitled to be paid the scale of pay attached to the higher post. In case, any special allowances are attached to the higher post, they shall be entitled to be extended the same, if the assignment of the look after charge exceeds a period of three months.

18. The OAs are disposed of with the above observations and findings. There shall be no order as to costs.

(Pradeep Kumar)	(A. K. Bishnoi)	(Justice L. Narasimha Reddy)
Member (A)	Member (A)	Chairman

/as/