



2024:DHC:8431-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 5756/2019

SH. R.S. MEENAPetitioner
Through: Mr. Rajat Aneja, Ms. Alka
Dwivedi and Mr. Aditya Sharma, Advocates

versus

NORTH DELHI MUNICIPAL CORPORATION
AND ORS.Respondent
Through: Ms. Avnish Ahlawat, Standing
Counsel

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% **15.10.2024**

C. HARI SHANKAR, J.

1. The petitioner was appointed Labour Welfare Superintendent w.e.f. 1 January 1987. He was promoted as Assistant Labour Welfare Officer¹ w.e.f 19 August 1991. According to the petitioner, he was entitled to be promoted as ALWO w.e.f. 1 January 1990.

2. The petitioner filed WP (C) 4298/1996 before this Court, praying that he be extended the benefit of *ad hoc* service rendered by him as ALWO. Following other litigations, with which this judgment

¹ "ALWO", hereinafter



need not be burdened, the petitioner was regularized as ALWO w.e.f.² 1 January 1990. He was promoted as Assistant Commissioner³ w.e.f 1 March 1996 and Additional Deputy Commissioner⁴ w.e.f. 4 September 2002.

3. By the following office order dated 12 April 2007, the petitioner was assigned Current Duty Charge⁵ of the post of Dy. Commissioner⁶, while retaining his own pay-scale:

“Dated: 12.04.2007

OFFICE ORDER

The following ADC/Jt. A & Cs (ad hoc) are, hereby assigned the Current Duty Charge to the post of Dy. Commissioner, in their own pay scale i.e.Rs.12000-16500/-, with immediate effect or till further orders, whichever is earlier:

1. Smt. C. A. Dhan, Jt. A & C,
2. Shri R. S. Meena, ADC/Factory Licensing with addl. charge of Toll Tax and CL & EC.
3. Smt. Sangeeta Bansal, ADC/L & E.

The above-said assignment shall be subject to the following terms & conditions:

- (i) The assignment is in their own pay scale and as a stop gap arrangement.
- (ii) It will not confer any right on them for blaming ad hoc or regular appointment to their post or any other service benefits, whatsoever.
- (iii) This interim arrangement can be terminated at any time by the Competent Authority without assigning any reason and/or prior notice.

² with effect from

³ “AC”, hereinafter

⁴ “ADC”, hereinafter

⁵ “CDC”, hereinafter

⁶ “DC”, hereinafter



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(iv) The period of service rendered on Current Duty Charge will not count as officiating in the higher grade or any purpose, whatsoever.

(v) Other conditions of service will be governed by the relevant rules and orders that may be enforced from time to time.

(vi) Above assignment is subject to finalization of seniority for the respective posts.

The afore-said assignment shall be further subject to the outcome of the following Court Case(s), pending or any other Court Case(s), pending if any:

1. CW No.3145/1991: K. K. Mishra Vs. MCD.
2. CW No.668/1992: P. R. Sethi Vs. MCD.
3. CW No.669/1992: V. K. Kapoor Vs. MCD.
4. LPA No. 122/2001: MCD Vs. S.C.Kohli & Ors.
5. LPA No.124/2001: R.K.Sharma & Ors. V. MCD.
6. CWP No.8742-43/2004: Sangeeta Bansal & Anrs. Vs. MCD & Anrs.
7. WP(C) No.12781/2004: Kuldeep Singh Yadav Vs. MCD & Ors.
8. CWP No.2283/2005: Jagdeep Chiller Vs. MCD & Ors.
9. WP(C) No.12947/2005: V.K.Kapoor. Vs. MCD.

This Issues with the approval of the Competent Authority.”

4. Since then, the petitioner was continuing to work as DC in the same capacity. He was being paid ₹ 15600-39400 (GP ₹ 7600) which was the pay-scale applicable to the post of ADC. One of the claims of the petitioner is that he was entitled to the pay of the post of DC i.e. ₹ 37400-67000 (GP ₹ 8700) w.e.f. 12 April 2007, when he was assigned CDC of the post.



5. Subsequently, a Departmental Promotion Committee⁷ was convened on 8 June 2015 for considering promotions to the grade of Assistant Commissioners/Dy. Assessor and Collector. The petitioner was found fit for promotion as AC by the said DPC and was accorded said promotion in the panel year 1996-97 *vide* Office Order dated 7 July 2015. The second grievance of the petitioner is that one of the officers junior to the petitioner was given the pay-scale of ₹ 37400-67000 (GP ₹ 8700) in pay band (PB)-IV w.e.f. 15 September 2006.

6. Predicated on these facts, the petitioner approached the learned Central Administrative Tribunal⁸ by way of OA 827/2016. The prayer clause in the OA reads thus:

“In view of the above mentioned facts and grounds it is most respectfully prayed that this Tribunal may graciously be pleased to:

(a) to issue direction to the respondent to pay difference of salary between pay scale of Rs. 15600-39100 (GP 7600) and Rs. 37400-67000 (GP 8700) to the petitioner w.e.f. 15.9.2006.

(b) to issue direction to respondents to pay difference of salary between pay scale of Rs. 15600-39100 (GP 7600) and Rs. 37400-67000 (GP 8700) to the petitioner w.e.f. 15.9.2006 till 19.2.2016.

(c) the Hon'ble Tribunal may pass any other order/direction as deemed fit and proper in the circumstances of the present case and in the interest of justice.”

7. Thus, it would be seen that, in the prayer clause in OA 827/2016, the petitioner only sought grant of the pay-scale of ₹ 37400-67000 (GP ₹ 8700) w.e.f. 15 September 2006, on the ground that his

⁷ “DPC”, hereinafter



junior had been granted the said scale from the said date. The prayer clause in the OA, therefore, did not contain any prayer seeking grant, to the petitioner, of the pay-scale of DC, consequent on his having been appointed to hold current charge of the said post. Nonetheless, in the body of the OA, the petitioner specifically pleaded that he was entitled to be paid the scale of DC w.e.f. 12 April 2007, when he was appointed to hold current charge of the post.

8. The OA filed by the petitioner, along with a number of other original applications, in which a common issue of whether a person who was appointed to hold current charge of a higher post was entitled to the pay of that post arose for consideration, were referred to a Full Bench of the Tribunal. All the said OAs together came to be disposed of by the Full Bench by the judgment dated 24 April 2019, under challenge in the present petition.

9. Para 3 of the impugned judgment sets out what, in the opinion of the Full Bench, was the common feature of all the OAs, which reads thus:

“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.”

10. We are constrained to observe, with greatest respect to the learned Tribunal and the Members of the Full Bench, perhaps, it might

⁸ “the learned CAT”, hereinafter



have been better if the learned Tribunal, after deciding the issue of whether a person who was appointed to hold current duty/look after charge of the higher post was entitled to the pay of that post, to have adverted to the individual facts of the OAs before it. The learned Tribunal has in fact noted, in para 3, that the arrangement was slightly different in different cases. For example, Lokpal Singh Negi, the applicant before the learned Tribunal in OA 2693/2018, had approached this Court, challenging the impugned judgment dated 24 April 2019 of the Full Bench of the learned Tribunal by way of WP (C) 8914/2019 and, on going through the facts in that case, we realised that the order appointing Lokpal Singh Negi on current duty charge basis to the higher post was completely distinct and different from the current duty charge order passed in the case of present petitioner, as reproduced in para 3 supra. There is no commonality between the two. In fact, the issue of whether the “current duty charge order” passed in the case of Lokpal Singh Negi was at all an order appointing him on current duty charge to the higher post, was, in our opinion, itself debatable, on the facts of that case. This distinction, however, has not been noted by the learned Tribunal as a result of which we were constrained, by a separate order passed today, to set aside the impugned judgment of the Full Bench of the learned Tribunal, insofar as it decided OA 2693/2018 filed by Lokpal Singh Negi and remand the matter to the learned Tribunal for consideration afresh.

11. Insofar as the aspect of the entitlement of the applicant to the scale of the higher post, consequent on his having been appointed to hold current duty charge of the said post is concerned, there is no



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substantial difference between the order dated 12 April 2007 passed in the case of the present petitioner, and the order dated 11 November 2003 passed in the case of R.K. Sabharwal, the applicant in OA 2557/2017, which has been treated by the Full Bench as a representative case. We are not, therefore, in this case, faced with the position that applies in the case of Lokpal Singh Negi, inasmuch as the impugned judgment of the Full Bench would apply, *mutatis mutandis*, to the present petitioner, insofar as the petitioner's claims for the scale of DC, on the basis of the order dated 12 April 2007 appointing him as DC on current duty charge basis is concerned.

12. However, as we have already noted, the case of the petitioner in OA 827/2016 was not restricted to claiming the scale of DC from the date on which the petitioner was asked to hold current duty charge of the said post. The petitioner independently claimed a right to the scale of DC from 15 September 2006, when his junior is stated to have been granted the said scale. This claim of the petitioner has not been addressed by the Full Bench of the learned Tribunal.

13. We are, therefore, restricting ourselves to the claim of the petitioner to the scale of DC from 12 April 2007, when the petitioner was directed to hold current duty charge of the said post, and are remitting the claim of the petitioner to the scale of ₹ 37400-67000 (GP ₹ 8700) w.e.f. 15 September 2006, when his junior is stated to have been granted the said scale, for consideration by the learned Tribunal *de novo*.



The impugned judgment

14. The learned Tribunal, in the impugned judgment, dealt with the entitlement of an officer appointed to hold current duty charge of a higher post, to the scale of that post, thus, in paras 7 to 12 and 14 to 17:

“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*⁹, and *Judhistir Mohanty v State of Orissa & others*¹⁰, and a judgment of the Delhi High Court in *Government of NCT of Delhi & others v S. C. Gupta & others*¹¹. 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

⁹ (1998) 4 SCC 291

¹⁰ (1996) 10 SCC 531

¹¹ 2013 SCC OnLine Del 1549



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***¹² 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.

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

¹² (2006) 11 SCC 709



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.”

Rival Submissions

15. We have heard Mr. Rajat Aneja, learned Counsel for the petitioner and Ms. Avnish Ahlawat, learned Standing Counsel for the respondent, at length.

16. Mr. Rajat Aneja commenced his submissions by relying on the



following order passed by a Division Bench of this Court in *North DMC v Anil Dalal*¹³:

“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.*; *Judhistir Mohanty v State of Orissa and Ors.* 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,

¹³ Order dated 20.09.2013 in **WP(C) 5960/2013**



the authority / Tribunal shall pass appropriate orders subject to disciplinary proceedings pending, if any. The writ petition is accordingly dismissed.”

According to Mr. Aneja, the case of the petitioner is squarely covered by the decision in *Anil Dalal*, which categorically holds that an officer who is appointed to hold current duty charge of a higher post is entitled to the pay of such higher post.

17. Besides, submits Mr. Aneja, the learned Tribunal was in error in applying, to the case of the petitioner, FR 49 (v) instead of FR 49 (i). He seeks to distinguish FR 49 (i) from FR 49 (v) by emphasizing the expression “higher post” used in FR 49 (i) as compared to the expression “another post” used in FR 49 (v). Thus, submits Mr. Aneja, if the charge that the employee is required to hold, irrespective of its nomenclature, is of a higher post, and amounts to granting full charge of the higher post, the case would be covered by FR 49 (i) and not by FR 49 (v). Mr. Aneja submits that the petitioner’s case, by this token, has to be considered under FR 49 (i) and not under FR 49 (v). He submits that the petitioner was discharging all duties of DC consequent to the order dated 12 April 2007. To substantiate this contention, Mr. Aneja has referred to the following documents:

- (i) Office Order dated 13 April 2007,
- (ii) Office Order dated 30 December 2008
- (iii) Office Order dated 18 June 2009
- (iv) Office Order dated 29 October 2008
- (v) Office Order dated 17 September 2010, and
- (vi) Office Order dated 11 November 2011.



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These Office Orders may be reproduced thus:

Office Order dated 13 April 2007

“Municipal Corporation of Delhi
(Central Establishment Department)
Town Hall : Delhi-110006”

No.F.1(9)/CED(II)/96/42/8847-918

Dated: 13.04.2007

OFFICE ORDER

The transfer/posting of the following Dy. Commissioners is hereby ordered with immediate effect:

S. No.	Name of the Officer	Present Posting	Transferred to/Posted as
1.	Sh. P.K. Panda	Dy. Cm/S&JJ	Dy.Cm/Shah(South) Zone vice Sh. S.K. Bhandari, Dy. Cm
2.	Sh. S.K. Bhandari	Dy.Cm/Shah(South) Zone	Dy. Cm/KB Zone, relieving Dy. Cm/West Zone of the said addl. Charge.
3.	Smt. C A Dhan	Awaiting Posting	Addl. A & C
4.	Sh. R.S. Meena	Awaiting Posting	Dy.Cm/Factory Licensing with addl. charge of Toll Tax and CL&EC in diverted capacity.
5.	Smt. Sangeeta Bansal	Awaiting Posting	DOI with addl. Charge of I & E Deptt.

This issues with the approval of the Competent Authority.

13/04/2007
(Renu Krishnan Jagdev)
Director (Personnel)”



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Office Order dated 30 December 2008

“Municipal Corporation of Delhi
(Central Establishment Department)
Town Hall : Delhi-110006”

No.F.11(6)/CED(II)/86/pt. VI/201/24923-94 Dated: 30.12.2018

OFFICE ORDER

Shri R.S. Meena, Deputy Commissioner (CDC), presently posted as Addl. Assessor & Collector is hereby transferred from A&C Deptt. and posted in Slum & JJ Deptt of MCD with the direction to report to Addl. Commissioner (Revenue/S& JJ) for further posting and Shri C. Yadav, ADC, is hereby transferred from Slum & JJ Deptt. And posted in A&C Department against a vacant post of Jt. A&C with immediate effect.

This issues with the approval of the Competent Authority.

(Y S Yadav)
Addl. Commissioner (CED)”

Office Order dated 18 June 2009

“Slum & JJ Department
Municipal Corporation of Delhi

No:GA/1072/3/ADMN/S&JJ/MCD/08/D 100 Dated:18 June,09

OFFICE ORDER

In exercise of powers vested in me under Section 491 of DMC Act, 1957, I hereby direct that all the powers conferred upon me under various sections of the said Act shall subject to my overall supervision, control and-review be also exercised by Shri R.S. Meena, Dy. Commissioner(S&JJ), with immediate effect in respect of disposal of the work of Slum &JJ Department, MCD.

Shri R.S. Meena, DC(S) shall continue reporting for discharge of his functional responsibilities to Addl. Commissioner(S&JJ), who is the Head of the Slum & JJ Department, MCD under the overall supervision and control of Commissioner, MCD.

Sd/-



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Mr. K.S. Mehra
Commissioner, MCD”

Office Order dated 29 October 2010

“Municipal Corporation of Delhi
(Central Establishment Department)
Town Hall : Delhi-110006”

No.F.11(61)/CED(III)/2007pt.II/6622

Dated: 29 Oct 2010

OFFICE ORDER

Shri Rajender Singh (Retd. Brigadier), presently posted in MCD as Dy. Commissioner, Shahdara (South) Zone, on re-employment basis is hereby Stand relieved from the MCD with effect from 31.10.2010 (A/N).

Further, Sh. R.S. Meena, Dy. Commissioner, who is presently posted in DUSIB, is hereby posted as Dy. Commissioner, Shahdara (South) Zone.

This issues with the approval of the Competent Authority.

(S.K. Sharma)
Asstt. . Commissioner (CED)”

Office Order dated 17 September 2010

“Municipal Corporation of Delhi
(Central Establishment Department)
Town Hall; Delhi-110006”

No.HC(A)-I/AO(E)-I/2010/5857

Dated: 17 Sep 2010

OFFICE ORDER

In supersession of previous orders, Shri R.S. Meena, Dy. Cm./Slum & JJ, is hereby nominated as Liaison Officer of the MCD for looking after matters relating to the reservations for SC/ST/OBC and persons with disabilities in addition to his own duties.



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This issues under the direction of the Competent Authority.

(S.K. Sharma)
Asstt. Commissioner (CED)”

Office Order dated 11 January 2011

“Municipal Corporation of Delhi
(Central Establishment Department)
22nd Floor, Dr. S.P. Mukherjee Civic Centre,
J.L. Nehru Marg, Minto Road, Delhi-110 002

No.F.11(41)/CED(II)/86/221

Dated: 11.01.2011

OFFICE ORDER

“Pursuant to Govt.of NCT of Delhi's Order, consequent upon joining the MCD and with the approval of the Competent Authority, in anticipation of the approval of the Corporation, the following officers are hereby appointed to the post of Dy.Commissioner on deputation basis w.e.f. the date of their joining, mentioned against the name of each, initially for a period of one year, on the terms and conditions of deputation, to be settled in due course:

Sl. No.	Name of the Officer/Post	GNCTD's Order No. & Date	Date of Joining
1.	Shri C.R. Garg, DANICS (1990), (DIG Delhi Prisons)	474, issued vide F.No. 30/14/2009/ S.I./ dated 22.11.2010	15.12.2010 (AN)
2.	Shri J.B. Singh, IAS (AGMU: 2000), Addl. Director (Education)	No.520, issued vide F.No.30/123/2010/ S.I./ dated 28.11.2010	04.01.2011 (FN)
3.	Shri D.N. Singh, DANICS, Director (DJB)	519, issued vide F.No. 30/123/2010/S.I./ dated 28.11.2010	10.01.2011 (FN)

Consequent upon joining of the above mentioned officers, with the approval of the Competent Authority, the transfer/posting of the



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following Dy. Commissioners is hereby ordered as under, with immediate effect:

Sl. No.	Name of Dy. Commissioners	From	To
1.	Shri D.P. Ture	Najafgarh Zone	Shahdara (North Zone)
2.	Shri J.B. Singh, IAS	Under Posting	Najafgarh Zone
3.	Shri Deepak Hastir	Central Zone	Shahdara (South Zone)
4.	Shri Vikas Anand, IAS	West Zone	Central Zone
5.	Shri C.R. Garg, DANICS	Under Posting	West Zone
6.	Shri D.N. Singh, DANICS	Under Posting	Rohini Zone
7.	Shri R.S. Meena	Shahdara (South) Zone	Director (Planning & Monitoring and Dy. Cmr.(HQ)

Sd/-
S.K.Sharma
Addl. Commissioner (Estt.)”

All the above Office Orders were issued by the MCD.

18. In this context, Mr. Aneja also points out that the petitioner was in fact eligible for regular promotion as DC and was actually recommended for promotion as DC on *ad hoc* basis on 20 November 2007. He was ultimately granted *ad hoc* promotion as DC on 19 February 2016, as already noted.

19. To substantiate his submissions, Mr. Aneja relies, apart from the decision in *Anil Dalal*, on the judgment of the Supreme Court in *Judhistir Mohanty* and the judgment of the Division Bench of this



Court in *S C. Gupta*. He also submits that, though these decisions were binding on the learned Tribunal, the impugned judgment proceeds in complete derogation thereof.

20. Responding to the submissions of Mr. Aneja, Ms. Avnish Ahlawat, learned Standing Counsel for the respondent, endorses the impugned judgment of the Full Bench of the learned Tribunal. She submits that the case of the petitioner was clearly one of holding of the post of DC on current duty charge basis and that there could, therefore, be no justification for the petitioner claiming the scale of DC. She submits that, in fact, the order dated 12 April 2007, whereby the petitioner was appointed to hold current duty charge of the post of DC, itself clarified that the petitioner would not be entitled to the pay of DC. In that view of the matter, she submits that no case for interference with the impugned judgment of the learned Tribunal can be said to exist.

Analysis

21. Chapter VI of the FRSRs deals with combinations of appointments. Undisputedly, the issue of regulation of pay of a government servant, holding a post in a substantive or officiating capacity who is posted to officiate as a temporary measure in one or more independent posts under the Government is regulated by FR 49. FR 49 envisages six situations in which this issue may arise, vide clause (i) to (vi) thereof. Of these, clauses (ii), (iv) and (vi) are obviously inapplicable. Clause (iii) deals with a situation in which a



government servant is formally appointed to hold charge of another post or posts which are either not in the same office or if they are in the same office, are in the same cadre/line of promotion. Inasmuch as the post of DC was in the same cadre and line of promotion as the post of ADC, FR 49 (iii) would also not apply.

22. The dispute even before this Court was as to whether the case is covered by FR 49 (i) or FR 49 (v). Mr. Aneja, learned Counsel for the petitioner, would assert the former, while Mrs. Ahlawat, learned Counsel for the respondent, insists that the latter would apply.

23. To our mind, the issue must largely depend on the exact terms of the order by which the additional charge is entrusted to the officer concerned. Where the order purports to be one entrusting only current duty charge/current charge of the additional post, unless it appears that the officer is being made to shoulder full responsibilities of the other posts, under the garb of being asked only to hold current duty charge, ordinarily the words used in the order entrusting additional charge must be accorded due deference.

24. We may address at this juncture the attempt of Mr. Aneja to distinguish between FR 49 (i) and FR 49 (v) by the use of the words “higher post” in FR 49 (i) and “another post” in FR 49 (v). Mr. Aneja would seek to contend that if the additional charge is of a higher post, FR 49 (i) would *ipso facto* apply and the applicability of FR 49 (v) would *ipso facto* be ruled out. In other words, Mr. Aneja’s contention is that FR 49 (v) would apply only where the additional charge is



granted in respect of a post which is either equal or lower in status to the substantive post held by the officer.

25. The contention, to employ a cliché, has only to be urged to be rejected. There is no justification for the Court rewriting FR 49 (v). The clause does not even remotely suggest that it applies only where the other post of which officer is entrusted charge is equal to or lower than the post substantively held by him. The word “another” in FR 49 (v) has to be accorded its normal and ordinary etymological meaning. It would embrace, therefore, *any other post* irrespective of whether it is higher, equal or lower in status and rank to the post substantively held by the officer. The submission of Mr. Aneja that FR 49 (v) would apply only where the other post is lower to the post substantively held by the officer is, therefore, categorically rejected.

26. When one now examines the terms of the order dated 12 April 2007 whereby the petitioner was assigned current duty charge of the post of DC, the nature of the charge entrusted to the petitioner becomes self-evident. The order expressly states that the petitioner was only assigned current duty charge of the post of DC. *Prima facie*, therefore, the case would even for this reason fall within the scope of FR 49 (v). This position is made more apparent from the fact that the order itself states that the pay scale to which the officer would be entitled was his “own pay scale” which at the very beginning of the order is identified as ₹ 12,000 – 16,500, which was the pay scale of ADC. It is further stated in the order that the current duty charge was being granted by way of a stop gap arrangement and would not entitle



the petitioner to claim either *ad hoc* or regular appointment to the said post. It also clarifies that the petitioner would not be entitled to claim “any other service benefits” attaching to the post of DC. It further states that the period of service rendered on current duty charge would not count as officiating service in the higher grade for any purpose whatsoever.

27. Quite clearly, therefore, the order cannot be treated as one of “formal appointment to hold full charge of the duties of a higher post” as envisaged by FR 49 (i). It is exactly what it states, viz. an order assigning current duty charge of the post of DC to the petitioner who continued to hold the substantive post of ADC.

28. The order, therefore, *ex facie* attracts FR 49 (v) and not FR 49 (i).

29. Mr. Aneja had also sought to place reliance on various Office Orders issued by the MCD, enumerated and reproduced *supra*, to buttress his contention that the petitioner had been granted full charge of the post of the DC. The Office Orders do not, however, support the contention. The Office order dated 13 April 2007 merely refers to the petitioner as “Dy.CM/Factory Licensing with additional charge of toll tax...”. This sole reference cannot amount to the petitioner being entitled to treat his case as one of formal appointment entrusting full duties, to the petitioner, of the post of DC. The Office order dated 30 December 2008 merely refers to the petitioner as Deputy Commissioner (CDC) and cannot confer on the petitioner the



substantive legal status of DC.

30. Similarly, Office Order dated 18 June 2009 as issued by the Commissioner MCD merely entrusts the petitioner with all powers conferred on the Commissioner in respect of disposal of work of the Slum and JJ department MCD. Even while doing so, the office order clarifies that the petitioner would continue to report to the Additional Commissioner (S&JJ) for his functional responsibilities and that the Additional Commissioner (S&JJ), would be the head of the Slum and JJ department. The mere fact that by the Office Order, the functions of the Commissioner are MCD in respect of disposal of the work of Slum and JJ department, MCD, was entrusted to the petitioner, does not entitle the petitioner to the substantive pay of DC.

31. The issue of entitlement of an officer who is merely asked to work on a higher post to the pay of the higher post, even while he continues to substantively hold the lower post, had come up for consideration before the Supreme Court as far back as in *Ramakant Shripad Sinai Advalpalkar v. UOI*¹⁴.

32. In that case, the petitioner Ramakant Sripad Sinai Adval Palkar¹⁵ was working as an “aspirante”, equivalent to the post of an Upper Divisional Clerk. The post of Treasurer fell vacant, whereupon Ramakant was asked to perform the duties of Treasurer on the stipulation that he would draw besides his own monthly salary, an allowance of ₹ 100/- per month. Ramakant claimed that he was

¹⁴ 1991 Supp (2) SCC 733

¹⁵ “Ramakant”, hereinafter



entitled to be treated as holding a post equivalent to the post of Treasurer.

33. The learned Judicial Commissioner, before whom the matter came up, held thus:

“7. The other important point is that the words “will perform” the duties of Treasurer are not isolated. They get strong support from the words “will draw the monthly salary of his post as acting Third Grade officer”, which occur in paragraph 2 of the order. These words clearly indicate that the order does not purport in any way to promote the petitioner to the post of Treasurer but quite on the contrary specifically provide that he shall remain in his post of Third Grade Officer.”

34. It was further held, in paras 4, 5 and 9 of the judgment, thus:

“4. On the first contention, the very terms of the office order dated August 30, 1963 [Ex. A] is clear and conclusive. It says:

“Shri Ramakanta Sripada Sinai Advolpalcar, acting Grade 3 Officer of the Caixa Economica de Goa *will perform the duties of the Treasurer* of Caixa Economica de Goa, vice Shri Antonio Xavier Furtado, who died this morning. Shri Advolpalcar should assume the function of the post from today.

Shri Advolpalcar will draw besides the monthly salary of his own post as acting Grade 3 Officer an allowance of Rs 100 p.m. which is payable to the post of treasurer under the existing rules”

(emphasis supplied)

5. The arrangements contemplated by this order plainly do not amount to a promotion of the appellant to the post of Treasurer. The distinction between a situation where a government servant is promoted to a higher post and one where he is merely asked to discharge the duties of the higher post is too clear to require any reiteration. Asking an officer who substantively holds a lower post merely to discharge the duties of a higher post cannot be treated as a promotion. In such a case he does not get the salary of the higher



post; but gets only what in service parlance is called a “charge allowance”. Such situations are contemplated where exigencies of public service necessitate such arrangements and even consideration of seniority do not enter into it. The person continues to hold his substantive lower post and only discharges the duties of the higher post essentially as a stop-gap arrangement.

9. The third contention is that appellant's ‘in-charge’ arrangements in the higher post had continued for so long a period that a determination of equivalence on the basis of his lower substantive post would become arbitrary. *This contention ignores the fact that an ‘in-charge’ arrangement is not a recognition of or is necessarily based on seniority and that, therefore, no rights, ‘equities or expectations could be built upon it.’ The third contention is also unmeritorious.*”

(Emphasis supplied)

35. Thus, as far back as in 1990, the Supreme Court held that entrustment of an “in charge” arrangement did not amount to a recognition of any rights, equities or expectations which could be founded on the arrangement.

36. Mr. Aneja also placed reliance on the judgment of the Supreme Court in *Judhistir Mohanty*, which has correctly been distinguished by the learned Tribunal in para 10 of the judgment under challenge:

“10. In *Judhistir Mohanty*’s case, the 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....”

37. Mr. Aneja additionally places reliance on *State of Punjab v Dharampal*¹⁶. The decision is totally inapplicable, as it does not deal with assignment of current duty charge at all. Rather, in that case, the respondent Dharampal was given officiating charge of the post of Superintendent (Grade-II) and thereafter directed to function as Superintendent (Grade-I). The relevant orders disclosed that Dharampal had actually been promoted as Superintendent (Grade-II) order dated the 9 December 2004. As the Supreme Court noted, Dharampal had actually been promoted as Superintendent (Grade-II) by order dated the 9 December 2004. Thereafter, he was again promoted on officiating basis to function as Superintendent (Grade-I).

38. That apart, para 13 of the judgment discloses why it does not apply to the facts of the present case:

“13. On a careful scrutiny of the aforesaid prescription, it is perceptible that the said Rule envisages a different situation

¹⁶ (2017) 9 SCC 395



altogether. The present factual matrix is quite different. *We are inclined to so hold as the respondent herein was holding higher posts and further he was performing the duties of higher responsibility attached to the posts.* Thus analysed, we arrive at the conclusion that the Rules do not bolster the proposition advanced by the learned counsel for the State.”

(Emphasis supplied)

39. As *Dharampal* did not deal with assignment of current duty charge of routine duties of a higher post, it has no application.

40. Mr. Aneja also cited *Secretary-cum-Chief Engineer v Hari Om Sharma*¹⁷. It is not necessary to refer in detail to the said decision as that was a case of promotion, and not of holding of a post on current duty charge basis.

41. In the facts of the present case, therefore, it is clear that the petitioner had only been assigned to hold current duty charge of the post of DC and had not been formally appointed to the post. There is nothing to indicate that, consequent to the order dated 12 April 2007, he was required to discharge full duties of the post of DC. Rather, the order expressly states that he was assigned the post of DC only on current duty charge basis, that the arrangement was stop gap and that he would continue to draw his substantive pay in the post of ADC.

42. The case, therefore, attracts clause (v) and not clause (i) of FR 49.

43. In that view of the matter, there is, therefore, no infirmity in the

¹⁷ (1998) 5 SCC 87



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decision of the learned Tribunal, rejecting the petitioner's claim for being paid the scale of DC for the time during which he held a current duty charge of the said post.

44. The petition is, therefore, bereft of merit, and is accordingly dismissed.

45. For the aforesaid reasons, we are of the opinion that the petitioner is not entitled to the pay of post of Deputy Commissioner by virtue of order dated 12 April 2007 by which he was asked to hold the current charge of the said post. To that extent, the impugned order dated 24 April 2019 is upheld.

46. However, as the learned Tribunal has not examined the entitlement of the petitioner to reliefs prayed in the OA, that is, OA 827/2016, the matter would stand remanded to the learned Tribunal for a fresh consideration in accordance with law.

47. The petition is disposed of in the above terms.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 15, 2024

yg/dsn

Click here to check corrigendum, if any