



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 29.01.2026  
Judgment delivered on: 13.05.2026  
Judgment uploaded on: *As per Digital Signature~*

+ **W.P.(C) 4178/2011**

THE COMMISSIONER MCD AND ORS

.....Petitioners

versus

RAJINDER PARSHAD SHARMA AND ORS

.....Respondents

**Advocates who appeared in this case**

For the Petitioners : Mr. Tushar Sannu, Mr. Fajallu Rehman,  
Advvs.

For the Respondents : Mr. Raghuvansh Mishra and Mr. Shivanshu  
Bhardwaj, Advvs/applicant.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**JUDGMENT**

**V. KAMESWAR RAO, J.**

**CM APPL.21815/2022**

1. For the reasons stated in the application, the same is allowed.
2. The application stands disposed of.

**CM APPL. 54745/2018**

3. The REVIEW PET. 473/2018 has been filed by the respondents



seeking review of the order dated 07.05.2013 passed by this Court, whereby it has allowed the writ petition filed by the petitioners challenging the order of the Central Administrative Tribunal (Tribunal) in Original Application (OA) No.1131/2010, wherein the Tribunal has directed the petitioners i.e. MCD to pay difference in wages to the respondent of the post of Superintendent w.e.f. 18.05.2005 by relying upon the judgment of the Supreme Court in the case of *Selveraj v. Lt. Governor of Islands, Portblair & Ors., (1998) 4 SCC 291*.

4. We find that this review petition has been filed in the year 2018 with a delay of 1665 days. A reference is made to the order passed by the Supreme Court in a SLP filed by respondent/Rajinder Prashad Sharma dated 07.05.2013 wherein the following has been stated:-

*“After arguing the matter for sometime, learned counsel for petitioner sought permission to withdraw the Special Leave Petition to enable the petitioner to file a Review Application. Liberty is granted without any liberty to challenge the same very impugned order before this Court. The Special Leave Petition is dismissed as withdrawn.”*

5. The review petitioner *vide* this application is seeking condonation of delay in filing the review petition by stating in paragraph 4 as under:-

*“4. That thereafter, the petitioner herein/respondent filed the review petition before this Hon'ble High Court vide diary No. D-47894/2014, which remained under objection and could not be listed. However, in the meantime the respondent fall sick and undergone surgery for knee replacement as well as serious urine infection thereby remained under medical treatment during the period from 2014 to 2015, therefore, could not get the review petition listed, which was under objection. While the respondent was recovering from*



*his illness, his mother expired in the year 2015 and his step mother also expired in the year 2016. During this period even his wife remained sick. After coming out from the depression of the death of his mother and step mother while improving upon his own illness the petitioner herein / review application contacted his counsel for pursuing the review application. However, while doing so he again had to approach the hospital for urine infection/diabetics in the year 2016. The petitioner herein / review applicant is still under medical treatment from the specialist. Copy of medical documents/reports as well as death certificates of mother and step mother are annexed herewith as Annexure RP-3 (colly). Meanwhile, one of the respondents in Tribunal i.e. Sh. A.K. Jain also expired during this period due to depression. Therefore, the present respondent / review petitioner i.e. Sh. R.P. Sharma was left to pursue the case, who is also under medical treatment by the specialist.*

*4. That now the petitioner approached the counsel immediately for removing the objections, which were there in the review petition. However, when contacted the registry to remove the objections and it could be learnt from the registry of Hon'ble High Court that the review petition for placing these medical documents on record before this Hon'ble Court. It is clear from the aforesaid facts that the petitioner has been pursuing his case sincerely and there is no deliberate delay on his part in filing Review Petition. Even otherwise also, the Petitioner who has a good case on merits should not be deprived from his claim on technical issue of limitation.”*

6. For the reasons stated in the application, we deem it appropriate to condone the delay of 1665 dyas in filing the Review Petition. The application is disposed of.

**REVIEW PET. 473/2018 & CM APPL. 50864/2022**



7. This review petition has been filed by the respondent seeking review of the order dated 07.05.2013, passed by this Court, wherein, this Court has set aside the order of the Tribunal whereby the Tribunal has granted to the review petitioner/respondent the salary of the post of Superintendent/Administrating Officer/AAC w.e.f. 18.05.2005 and 31.07.2007 respectively.

8. The submission of Mr. Shivanshu Bhardwaj, learned counsel for the review petitioner is that this Court without referring to the Fundamental Rule (FR) 49, in *toto* but by referring to Rule 49(v) has allowed the writ petition by holding that *Selveraj (supra)* has no applicability in the facts of the case.

9. According to him, the issue is no more *res integra* in view of the judgment of the Co-ordinate Bench of this Court in the case of ***BSNL v. S.N. Paracer & Ors., WP(C) 8122/2011***, wherein, the respondent therein who was denied the pay of higher post of Chief Engineer(E), was granted the pay and pensionary benefits on account of such fixation.

10. In ***S. N. Paracer (supra)***, the Tribunal allowed the OA. The BSNL filed the writ petition before this Court. This Court dismissed the writ petition by stating in paragraph 4, as under:-

*“4. This Court has carefully considered the submissions as well as the records. The CAT was considerably influenced by the rulings of the Supreme Court in three judgments, i.e. 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 and a decision of the Division Bench judgment 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)]. In the latter decision, the Court took note of other decisions of the Supreme Court and also took note of Fundamental*



*Rule 49 which regulates the pay of an individual asked to officiate on a temporary basis on independent basis or of higher responsibility. The rule clearly mandates that in addition to ordinary pay, he shall be allowed the pay admissible to him if he is appointed to officiate in the higher post. In S.C. Gupta (supra), the Court relied upon the decision in Balbir Singh Dalal and Ors. v. State of Haryana and Anr. 2002 (4) SCT 422. In all these cases, relied upon by the CAT - Selvaraj (supra); Judhistir Mohanty (supra) and S.C. Gupta (supra), the official was held entitled on the ground that he discharged duties, functions and responsibilities attached to a higher post. The Court was in no way concerned with whether such official did or did not discharge statutory functions – a point of distinction which is sought to be urged by the BSNL. Even otherwise, the discharge of a particular kind of statutory function, upon which much emphasis is laid, cannot be decisive of the person’s entitlement under FR 49 because the principle behind it is that as long as the individual is discharging or asked to discharge functions or powers attached to higher post, he should be paid the salary prescribed for such post. The CAT noted, in our view rightly, that the facts in R.K. Aggarwal (supra) were somewhat different; the vacancy was on account of pending litigation and the petitioner there had demanded that he be given pay scale which was denied by the State. Such is not the case in the present instance. The respondent and the others were in fact appointed on “look-after” arrangement. He would be entitled to the pay prescribed for the post in which he officiated and eventually superannuated while so officiating. In the light of the above discussion, the Court finds no infirmity with the reasoning or finding of the CAT. The writ petition is accordingly dismissed.”*

11. Hence, it is his submission, that the review petitioner herein having



been given the current duty charge of the post of Superintendent initially on 18.05.2005 and later, promotion on *ad hoc* basis on 31.08.2005 in the Pay Scale of Rs.6,500-10,500, he has to be paid salary of the post on which he was promoted on *ad hoc* basis and continue to be paid the same thereafter.

12. We agree with the submission made by Mr. Bhardwaj by relying upon the judgment of this Court in the case of *S. N. Paracer (supra)*. A perusal of paragraph no.4 (which we have already referred in paragraph no. 10 above) of the above judgment is clear that this Court by referring to FR 49 has held that as long as the individual is discharging or asked to discharge functions or powers attached to the higher post, he should be paid the salary prescribed for such post.

13. No doubt, *vide* order dated 18.05.2005, the petitioner/Corporation had assigned current duty charge of the post of Superintendent to the respondent/Rajinder Parshad Sharma but *vide* Office order dated 31.08.2005, the petitioners have made the assignment as an *ad hoc* promotion to the post of Superintendent in the Pay Scale of 6,500-10,500, in that sense they have granted promotion to him. That apart, *vide* order dated 31.08.2007, the respondent was again given current duty charge of the post of AO/AAC. This Court while deciding the writ petition filed by the petitioner/corporation, has only referred to the order dated 31.08.2005 to mean that the assignment being current duty charge as per FR49(v) and also distinguishing the judgment in the case of *Selveraj (supra)*, allowed the writ petition.

14. Suffice it to state, this Court had not taken into consideration the Office order dated 31.08.2005, whereby the respondent was granted promotion to the post of Superintendent on *ad hoc* basis in the scale of Rs.6,500-10,500 which is a higher scale and also the fact that, while



working as Superintendent on *ad hoc* basis, he was given current duty charge of the post of AO/AAC vide officer order dated 31.08.2007. Though current duty charge does not involve grant of the pay of the post, but in this case, the scale of pay of AO/AAC was also Rs.6,500-10,500 equivalent to the scale of Superintendent, which was given to the respondent with effect from 31.08.2005. The respondent, who was promoted in the scale of Rs. 6,500-10,500 as Superintendent shall continue to draw the scale even if he was given current duty charge as AO/AAC because he shall be entitled to the scale as Superintendent from which he was given current duty charge, of the post of AAO/AAC.

15. So, it follows the respondent shall not be entitled to the pay of Superintendent w.e.f. 18.05.2005 but surely w.e.f. 31.08.2005 and he shall continue to draw the scale of Rs. 6,500-10,500 even if he was given current duty charge of the post of AO/AAC. This we say in view of the judgment referred to by the Tribunal in the case of *Silveraj (supra)* and also in the case of *S. N. Paracer (supra)*.

16. Accordingly, the order dated 07.05.2013 is required to be reviewed. We recall the judgment dated 07.05.2013.

17. Having heard the counsel for the parties on merits and in view of our conclusion above in the review petition, we hold the respondent shall be entitled to the Pay Scale of Rs.6,500-10,500 on his promotion on *ad hoc* basis on the post of Superintendent with effect from 31.08.2005 and not from 18.05.2005, as directed by the Tribunal. The consequential action of payment of arrears with interest at the rate of 6% per annum shall be made to the respondent within 3 months.

18. The review petition is allowed and the writ petition filed by the



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Corporation is dismissed. The pending application(s) is disposed of as infructuous.

**V. KAMESWAR RAO, J**

**MANMEET PRITAM SINGH ARORA, J**

**MAY 13, 2026/rk**