

**Central Administrative Tribunal
Principal Bench, New Delhi**



OA No. 1106/2020

This the 8th day of March, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Shri Surindra Singh,
EE, age 53 years, Group A,
S/o Late Shri Than singh,
R/o House No. 8, Gali No. 2,
Old Govindpura Extn.,
Delhi – 51.

...Applicant

(By Advocate: Mr. Rajeev Sharma)

VERSUS

1. The Commissioner,
North Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre, 4th floor,
J.L. Marg, New Delhi.
2. The Commissioner,
East Delhi Municipal Corporation,
419, F.I.E., 1st Floor, Ugyog sadan,
Patpatganj Industrial area,
Delhi.

...Respondents

(By Advocates: Mr. R. V. Sinha with Mr. Amit Sinha for R-1
and Mr. Manjeet Singh Reen for R-2)

ORDER (Oral)



Mr. Justice L. Narasimha Reddy:

The applicant joined the service of the Municipal Corporation of Delhi as Assistant Engineer by way of direct recruitment in the year 1998. He was placed at Sl. No. 385 in the seniority list. A criminal case was instituted against him in the year 2003. Ad hoc promotions to the post of Executive Engineer (EE) took place, vide order dated 15.12.2008. However, the case of the applicant was not considered, since he was facing a criminal case. The selection for regular promotion to the post of EE was considered by the DPC, which met on 26.12.2016. At that stage, the case of the applicant was considered but the result thereof was kept in sealed cover, in accordance with law.

2. The applicant was acquitted in the criminal case, through judgment dated 22.12.2017. Taking the same into account, the respondents passed an order dated 25.04.2018, stating that consequent upon his acquittal, the sealed cover adopted in the case of the applicant, was opened and since the DPC found him fit, he was promoted to the post of EE notionally w.e.f. 28.12.2016, the date when his junior was promoted, and notified vide order dated 12.01.2018. The applicant filed this O.A. with a



prayer to direct the respondents to promote him w.e.f. 15.12.2008 on notional basis. He submits that the respondents ought to have adopted the sealed cover procedure even at the stage of ad hoc promotions and he was denied the benefit of ad hoc promotion from 2008 onwards without any basis. According to him, had the sealed cover been adopted at that stage, he would have got the benefit of ad hoc promotion from 2008. He has also prayed for a direction to promote him for the post of Superintending Engineer, duly taking into account, the date of promotion as Executive Engineer as 15.12.2008. Ancillary reliefs are also prayed for.

3. The respondents filed a detailed counter affidavit. They contend that ad hoc promotions took place to meet the exigencies of department and the case of the applicant was not considered, since he was facing a criminal case. As regards the regular promotions it is stated that the sealed cover procedure was adopted and once the applicant was acquitted, he was extended the benefit of regular promotion on par with his junior. The plea of limitation is raised for the claim for promotion on notional basis w.e.f. 15.12.2008. The applicant filed a rejoinder raising various contentions.



4. Today, we heard Mr. Rajeev Sharma, learned counsel for the applicant and Mr. R.V. Sinha and Mr. Manjeet Singh Reen, learned counsel for the respondents.

5. It has already been mentioned that the applicant joined the service of the respondents in the year 1998. For one reason or the other, regular promotions to the post of EE did not take place for a long time. Ad hoc promotions were effected in the year 2008, through order 15.12.2008. The case of the applicant was not considered since he figured as an accused in a criminal case. The applicant did not challenge the non-inclusion in the order dated 15.12.2008 and he cannot reopen the issue at this stage.

6. The DPC for regular promotion for the post of EE met on 26.12.2016 and an order dated 12.01.2017 was issued. In case of the applicant, the sealed cover procedure was adopted, and as soon as he was acquitted in the criminal case in the year 2018, an order dated 25.04.2018 was passed, extending him the benefit of regular promotion on par with his junior. The order reads as under:

“Consequent upon Vigilance Clearance report as communicated by the Vigilance Department, East DMC vide their letter No. JLO (VCR) Vig./2017/175 dated 24.01.2018, in accordance with the recommendations of the DPC and with the approval of the Competent Authority, Sealed Cover of DPC to the post of Executive Engineer (Civil) held on 26.12.2016 has been opened in respect of Sh. Surendra Singh S/o Sh. Than Singh, AE



(C), (SC), Sty. No. 385 on regular basis. He is hereby granted regular promotion notionally to the post of Executive Engineer (Civil) in Pay Band-3, Rs. 15600-39100 + rs. 6600/- GP revised to Pay Matix-11 as per 7th CPC w.e.f. 28.12.2016, i.e. the date of, when his junior was promoted, notified vide CED's O.O. No. F.8(8)/CED (NDMC)/Pt. VII/2015/G.F-02/98 dated 12.01.2017.

Further, consequent upon regular promotion as Executive Engineer (C), his name is hereby inserted at serial No. 18-A i.e. below the name of Sh. Satish Chandra Gautam S/o Sh. Mahavir Singh (SC), Sl. No. 18 and above the name of Sh. Pramod Kumar Raja, S/o Sh. J. N. Raja (SC), Sl. No. 19 in CED's Office Order No. F.8 (8)/CED (NDMC)/Pt. VII/2015/G.F-02/98 dated 12.01.2017.

Consequent upon regular promotion, Sh. Surender Singh, AE is hereby directed to report to Engineer-in-Chief, East DMC for further duties.”

7. The applicant can have grievance if only his juniors were extended any other benefit and he was denied the same. His representation, which was filed before filing the OA, or for that matter the OA itself, is silent on this aspect. Added to that, in the order dated 15.12.2008, the respondents made it abundantly clear that ad hoc promotion cannot be treated as regular, and denial of that in any manner was on account of pendency of a criminal case. Under these circumstances, the applicant cannot straightforwardly claim the benefit of notional promotion to the post of EE from 15.12.2008. Though he relied upon certain orders, through which four EEs were extended the benefit of ad hoc promotion from 15.12.2008, the circumstances under which they were given the benefit are not before us, nor he has raised any issue out of it.



8. We do not find any merit in the OA. It is accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/dkm/jyoti/ankit/sd/akshaya/