

**Central Administrative Tribunal
Principal Bench**

OA No.67/2016

New Delhi, this the 12th day of July, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

P. C. Meena, SE (Civil)
Aged about 49 years,
S/o Late Ram Sahay
R/o A-2/165, Janak Puri,
New Delhi 110 058.

... Applicant.

(By Advocate : Shri M. K. Bhardwaj)

Versus

North DMC & Ors through :

1. The Commissioner
North Delhi Municipal Corporation
4th Floor, Civic Centre, Shyama Prasad,
Mukherjee Building,
New Delhi.
2. The Commissioner
South Delhi Municipal Corporation
9th Floor, Civic Centre, Shyama Prasad,
Mukherjee Building,
New Delhi.
3. The Commissioner
East Delhi Municipal Corporation (Hq.)
Udyog Sadan, 1st Floor,
Patparganj Industrial Area,
New Delhi.

... Respondents.

(By Advocates : Shri R. V. Sinha for Shri R. N. Singh for R-1
Shri R. K. Jain for R-2.)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman:

The applicant joined as Assistant Engineer (Civil) on 04.10.1989 in erstwhile MCD. He earned promotions up to the post of Executive Engineer and thereafter as Superintending Engineer (Civil) on ad hoc basis though with the intervention of the Court.

2. The applicant's grievance is that he was not considered for promotion to the post of Chief Engineer (Civil) even though persons junior to him were considered and promoted. It is, however, admitted case of the applicant that an FIR was registered against him and a Criminal Case No.RC-2(E)/2001-SIU-IX dated 02.03.2001 was filed against him before the Criminal Court for trial. In October 2006, charge was framed against him. The applicant was, however, acquitted by the Criminal Court vide judgment dated 22.12.2015. He was required to be considered for promotion in accordance with law.

3. The Departmental Promotion Committee convened for consideration of all the eligible candidates for promotion to the post of Superintendent Engineer (Civil) on regular basis on 16.12.2015. Sealed cover procedure was resorted to in respect to applicant on account of pendency of criminal proceedings against him. It is submission of Mr. M. K. Bhardwaj, learned counsel for the applicant that on opening of the sealed cover if applicant is found fit for regular promotion he is entitled for promotion to the post of Chief Engineer (Civil) and thereafter to the post of Engineer-in-Chief. The factum of acquittal of the applicant is not disputed by the other side.

4. In the order dated 18.05.2016 submission of Mr. Bhardwaj was noticed to the effect that Central Bureau of Investigation (CBI) has already informed respondent No.2 that they are not filing any appeal against the acquittal of the applicant. Today, Mr. Bhardwaj has also placed on record copy of a communication dated 02.05.2016 from the Superintendent of Police, CBI, EOU-VII/EO-III to the Assistant Law Officer (Vigilance), SDMC indicating therein that CBI has decided not to file any appeal against the order of Special Judge acquitting the public servants which *inter alia* includes the applicant. This communication is

taken on record. In the said order, submission of Mr. R. N. Singh, learned counsel appearing on behalf of respondent No.3 was also noticed. It has been observed that respondent No.1 has already written to the Respondent No.2 as also to the Vigilance Department about the vigilance clearance in respect of the applicant. Shri R. K. Jain, learned counsel for respondent No.2 submitted that the report regarding vigilance clearance is awaited. They were allowed time to take fresh instructions, even when, Shri R. K. Jain appeared today and submitted that he has not been able to inform the court as to whether vigilance clearance has been accorded or not.

5. In any case, from the reply it appears that except the criminal case no other departmental proceedings have been initiated against the applicant. Admittedly, the applicant has been acquitted in the criminal case. However, it is for the vigilance department to accord clearance based upon the reports available with them, but the Court would not wait indefinitely to enable the respondents to make necessary communication to the administrative department. The respondents were granted opportunity. They have failed to avail the same.

6. The only relief claimed in the present OA is direction to the respondents to promote the applicant to the post of Superintending Engineer (Civil) on regular basis w.e.f. 1999 and thereafter as Chief Engineer from 2006-2007, and Engineer-in-Chief from 2015. In view of the fact that there were criminal proceedings against the applicant and sealed cover procedure was adopted, consideration of the applicant for promotion has to be in accordance with law on opening of the sealed cover as held in ***Union of India vs. K. V. Jankiraman & Ors.*** [(1991) 4 SCC 109]

7. In view of the above circumstances, we dispose of this Application with the following directions:-

- (a) The Vigilance Department shall communicate its opinion to the administrative department within a period of two weeks, failing which it shall be presumed that there is no vigilance matter pending against the applicant.
- (b) The Competent Authority shall open the sealed cover within a period of two weeks thereafter and depending upon the outcome of the report of the Departmental Promotion Committee in the sealed cover further action shall be taken.
- (c) In the event, the applicant is found fit on opening of the sealed cover, he shall be accorded promotion within a period of four weeks from the date of opening of the sealed cover on regular basis as Superintending Engineer in accordance with recommendations of DPC and thereafter consider him for further promotions to the next higher posts of Chief Engineer (Civil) and Engineer-in-Chief from the date his juniors were so promoted. The entire process shall be completed within a period of six months.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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