

# Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.82/2014  
M.A.No.105/2014

Order reserved on 7<sup>th</sup> December 2016

Order pronounced on 6<sup>th</sup> February 2017

**Hon'ble Mr. Raj Vir Sharma, Member (J)**  
**Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Shri O P Vimal s/o late Shri Ram  
r/o C-7/133, Yamuna Vihar  
Delhi
2. Shri N C Meena s/o Shri M L Meena  
1225-A, Gali No.1, Bola Nath Nagar  
Shahdara, Delhi

..Applicants

(Mr. Rajeev Sharma, Advocate)

Versus

1. The Commissioner  
North Delhi Municipal Corporation  
Dr. S P Mukherjee Civic Centre, 4<sup>th</sup> Floor  
J L Marg, New Delhi
2. Addl. Commissioner (Engg.)  
North Delhi Municipal Corporation  
Dr. S P Mukherjee Civic Centre, 4<sup>th</sup> Floor  
J L Marg, New Delhi
3. Addl. Dy. Commissioner (Engg.)  
North Delhi Municipal Corporation  
Dr. S P Mukherjee Civic Centre, 9<sup>th</sup> Floor  
J L Marg, New Delhi
4. Director (Personnel)  
North Delhi Municipal Corporation  
Dr. S P Mukherjee Civic Centre, 13<sup>th</sup> Floor  
J L Marg, New Delhi

..Respondents

(Mr. R.K. Jain, Advocate)

## **O R D E R**

**Mr. K.N. Shrivastava:**

M.A. No.105/2014

M.A. seeking joining together in a single petition is allowed.

O.A. No.82/2014

The applicants have filed the instant O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main reliefs:-

“(i) to issue direction to the respondents to implement order dated 06.04.2011 with parity of Shri S.S. Dang, Shri Mahender Singh and Shri V.P. Gupta and consequential seniority list dated 15.02.1999;

(ii) to issue direction to the respondents to place the applicants at the appropriate place in the seniority list dated 15.02.1999 considering the year of promotion of applicant No.1 as 01.01.1992 and for applicant No.2 as 01.01.1993.

(iii) to issue direction to the respondents to give all the consequential benefits for which applicants are entitled including difference of salary between J.E. and A.E during the period applicant No.2 has worked as A.E. on current duty i.e. from 13.7.1995 to 30.12.1997.”

2. The brief facts of the case are as under:-

2.1 The applicants joined the erstwhile Municipal Corporation of Delhi (MCD) as Junior Engineer (Civil) [JE (C)] on 17.03.1981 and 18.09.1989 respectively. As per the extant Recruitment Rules (RRs), the next post of Assistant Engineer (Civil) [AE (C)] is to be filled from amongst promotees from the cadre of JE (C) and direct recruitees (degree holders) on 50 : 50 basis.

2.2 No Departmental Promotion Committee (DPC) meetings were held between 1992 to 1997. Finally, a meeting of the DPC was held on 09.12.1997 to consider promotion of JE (C) to the post of AE (C) on regular basis in which the name of applicant No.1 was recommended for promotion w.e.f. 30.12.1997. Another DPC meeting was held on 14.05.1998 in which the name of applicant No.2 was recommended for promotion on regular basis as AE (C) w.e.f. 15.05.1998.

2.3 As per the DPC's recommendations, promotions were effected vide order dated 30.12.1997. The said order gave room to multiple litigations before this Tribunal as well as before Hon'ble High Court of Delhi. The controversy was finally settled by the Hon'ble High Court vide its judgment dated 22.11.2005 in W.P. (C) No.5838/1998 titled as **O.P. Mittal v. M.C.D. & others**, in which the following directions were issued:

*“In view of the above findings, a direction is issued to the MCD to hold a Review DPC in respect of each of the years 1991–97 having regard to the number of vacancies falling in each one of those years and also duly considering the Petitioners vis-à-vis the other eligible candidates as of each year.”*

2.4 In compliance with the directions of Hon'ble High Court in **O.P. Mittal** (supra), the MCD conducted a review DPC on 24.04.2006 where separate panels for each year in reference to the vacancies were prepared and as per the recommendations of the DPC, Annexure A-3 order dated 08.05.2006 was issued whereby 50 JEs (C) were promoted as AEs (C) as per the recommendations of the review DPC. The said order also indicated the effective date of promotion in respect of each candidate.

2.5 Annexure R-1 circular dated 10.03.1989 of Department of Personnel & Training (DoPT) stipulates as under:-

*“....while promotions will be made in the order of the consolidated select list, such promotions will have only prospective effect even in cases where the vacancies relate to earlier year(s).”*

2.6 The Tribunal in T.A. No.890/2009 titled as **B.L. Jindal v. M.C.D.** and T.A. No.986/2009 titled as **Naveen Garg & others v. M.C.D.** (decided on 11.01.2010) and four other O.As., directed M.C.D. to hold review DPC taking into account the vacancies occurred in each year from

1999 to 2006 and consider only such officers, who come within the zone of consideration. Accordingly, the review DPCs were held. The applicants were considered in the review DPC for the year 1997 held on 26.11.2010, but were found to be not falling within the normal as well as five times extended zone of consideration. In order to clear the backlog vacancies of SC/ST, the review DPC decided to prepare a separate zone of consideration in which all SC/ST candidates were considered for promotion. Finally, the review DPC, in the meeting held on 26.11.2010, recommended the names of applicant No.1 for promotion w.e.f. 30.12.1997 against the vacancy of the year 1992 and applicant No.2 for promotion w.e.f. 30.12.1997 against the vacancy of the year 1993. Accordingly, Annexure A-5 (colly.) office order dated 06.04.2011 came to be issued wherein the names of the applicants are figured at Sl. Nos. 5 & 12, and thereafter a revised final seniority list of AE (C), appointed in the year 1991 and onwards in M.C.D., came to be issued on 18.07.2011.

The grievance of the applicants is that they should have been assigned seniority w.e.f. 01.01.1992 and 01.01.1993 respectively and not w.e.f. 30.12.1997. Aggrieved by the action of the respondents in not assigning the seniority as per their claim, the applicants have filed the instant O.A. praying for the reliefs mentioned in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicants thereafter filed their rejoinder. With the completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 07.12.2016. Mr. Rajeev

Sharma, learned counsel for applicants and Mr. R K Jain, learned counsel for respondents were heard.

4. The main contention of the respondents in their reply is that conduct of a review DPC became obligatory in view of directions given by the Hon'ble High Court of Delhi in **O.P. Mittal's** case (supra). It is further contended that the applicants were not within the zone of consideration when the DPC considered the vacancies of the years 1992 & 1993. Even in the review DPC for the year 1997 held on 26.11.2010, wherein these applicants were considered for promotion, they were not falling within the normal zone as well as five times extended zone of consideration as per the instructions of the DoPT (*ibid*). However, to clear the backlog vacancies of SC/ST, the DPC chose to prepare a separate zone of consideration for eligible SC/ST candidates and accordingly these two applicants have been considered for the vacancies of the years 1992 & 1993 but recommended for promotion w.e.f. 30.12.1997. The respondents have further stated that this Tribunal in O.A. No.1276/2012 titled **Ajay Kumar Aggarwal v. M.C.D.** vide order dated 30.04.2014 has quashed the promotion order dated 06.04.2011 as well as seniority list dated 18.07.2011 on the ground that the zone of consideration cannot be enhanced which has been done by the review DPC in respect of SC/ST candidates while preparing separate zone of consideration.

5. The respondents have further pleaded in their reply that the applicants cannot claim parity with Mr. S S Dang, Mr. Mahender Singh and Mr. V P Gupta, simply on the ground that the facts in the cases of those officials are entirely different than those of the applicants herein. Those

officials were left out candidates and were considered in the DPC meeting held on 09.12.1997 and promoted thereafter with effect from the dates their juniors were promoted, but their seniority were fixed in accordance with the directions of Hon'ble High Court of Delhi.

6. In their rejoinder and additional affidavit, the applicants have controverted the averments made by the respondents in their reply and have asserted that the DPC had indeed recommended promotion of applicant No.1 against the vacancy of the year 1992 and that of applicant No.2 against vacancy of the year 1993. In this connection, Annexure R-1 letter dated 25.10.2013 from North Delhi Municipal Corporation (North DMC) to Union Public Service Commission (UPSC) relating to applicant No.2 has been cited to affirm that applicant No.2 is entitled for consideration for the panel year 1993.

7. We have given our thoughtful consideration to the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

8. Admittedly, the DPC meeting was held on 09.12.1997 wherein vacancies for the years 1991 to 1997 were considered to promote the eligible JE (C) to the post of AE (C). Based on the recommendations of the DPC, promotions were effected vide order dated 30.12.1997 but after the directions of the Hon'ble High Court in **O.P. Mittal's** case (supra), the entire process was revisited by way of conduct of a review DPC meeting on 26.11.2010. The DPC found that these applicants were not falling within the zone of consideration for the panel years 1992 & 1993, as claimed by the applicants. Even for the year 1997, the applicants could be made eligible

only after the DPC decided to prepare a separate zone of consideration for SC/ST candidates in order to clear the backlog vacancies. As an outcome of this relaxation, the DPC found them eligible for promotion w.e.f. 30.12.1997 *albeit* against the backlog vacancies for the years 1992 & 1993. Based on the recommendations of the review DPC in its meeting held on 26.11.2010, the respondents have issued the impugned promotion order dated 06.04.2011 (Annexure A-5 (colly.)) and subsequently, the impugned seniority list dated 18.07.2011. It is also to be noted that subsequently this Tribunal, vide order dated 30.04.2014 in O.A. No.1276/2012 (supra), has found fault with the extended zone of consideration and quashed the (Annexure A-5 (colly.)) office order dated 06.04.2011 as well as the seniority list dated 18.07.2011. The respondents have given cogent reasons as to why the applicants cannot claim parity with Mr. S S Dang, Mr. Mahender Singh and Mr. V P Gupta.

9. Taking all these developments/factors into consideration, we do not find any flaw in the action taken by the respondents in issuing the Annexure A-5 (colly.) office order dated 06.04.2011 and seniority list dated 18.07.2011 at that point of time.

10. In the conspectus of the discussions in the foregoing paragraphs, we do not find any merit in the O.A. Accordingly, the O.A. is dismissed. No order as to costs.

**( K.N. Shrivastava )**  
**Member (A)**

**( Raj Vir Sharma )**  
**Member (J)**

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