

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. No. 316/2015
With
O.A. No. 2640/2015

New Delhi, this the 24th day of August, 2016.

HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE DR. BRAHM AVTAR AGRAWAL, MEMBER (J)

O.A. No. 316/2015

S.K. Parashar (Aged 56 years)
(Group-B)
S/o Late Shri B.R. Parashar,
R/o 18A, Vikas Niketan,
D.D.A. MIG Flats,
Pitampura, Delhi-110034.
Presently working as
Assistant Engineer (Civil) in
the O/o EO-II to EM/DDA.

.. Applicant

(By Advocate : Shri R.A. Sharma)

Versus

1. Delhi Development Authority,
Through its Vice-Chairman,
Vikas Sadan (B-Block),
1st Floor, Near INA, New Delhi-110023.
2. Commissioner (Personnel),
DDA, Vikas Sadan (B-Block),
G.F., Near INA,
New Delhi-110023.
3. Shri R.C. Tyagi,
(AE(C)/Retd./DDA),
R/o C-405, Sector : Beta-1,
Greater Noida,
Gautambudh Nagar – 201310 (UP).

4. Shri Prem Kumar,
EE/FOD-II (Projects),
DDA, Office Barracks,
Sead Bed Park,
Laxmi Nagar, Delhi-110092.

.. Respondents

(By Advocate : Shri Arun Birbal)

O.A. No. 2640/2015

Khushi Ram Singhal (Aged 56½ years)
(Group-B)

S/o Shri Ram Kumar Singhal,
R/o A-33. Motilal Road,
Adarsh Nagar, Delhi-110033.

Presently working as
Assistant Engineer (Civil) in
Civil Circle-9, DDA Office Complex,
Madhuban Chowk, Rohini,
Delhi-110085.

.. Applicant

(By Advocate : Shri R.A. Sharma)

Versus

1. Delhi Development Authority,
Through its Vice-Chairman,
Vikas Sadan (B-Block),
1st Floor, Near INA,
New Delhi-110023.
2. Commissioner (Personnel),
DDA, Vikas Sadan (B-Block),
G.F., Near INA,
New Delhi-110023.
3. Shri Bhim Sen Kukreja,
Posted as EE in Central Design Office,
D.D.A., Vikas Minar,
I.P. Estate, New Delhi-110002.

4. Shri Akhilesh Chandra,
Posted as EE (Monitoring),
EM's Office, D.D.A., Vikas Sadan,
B-Block, 1st Floor, Near INA,
New Delhi-110023.
5. Shri Suresh Kumar Goel,
Presently posted as EE/WD-9,
DDA Project Office, Mangla Puri,
Delhi-110045.
6. Shri Rakesh Kumar Grover,
Presently posted as EE (Plg.),
Civil Circle-13, DDA Project Office,
Mangla Puri, Delhi-110045.
7. Shri Rajan Chadha,
Presently posted as EE (HQ) in the
Office of Project Manager (Flyover),
DDA Vikas Minar, 17th Floor,
I.P. Estate, New Delhi-110002.
8. Shri Neeraj Kumar Gupta,
Posted as EE (HQ), Civil Circle-7,
DDA Cycle Market, Jhandewalan,
New Delhi-110055.
9. Shri Praveen Kumar Goel,
Posted as EE(HQ) in the
Office of Project Manager (MPR),
DDA G.T. Karnal Road,
Azadpur, Delhi-110033.
10. Shri Sushil Kumar Kochar,
Posted on deputation as EE to
Delhi Transport and Infrastructure
Development Corporation Ltd.,
IInd Floor, ISBT, Kashmeri Gate,
Delhi-110054.

.. Respondents

(By Advocate : Shri Arun Birbal)

ORDER (Oral)**By Hon'ble Mr. P.K. Basu****OA 316/2015**

This matter was heard on 15.07.2016 and the learned counsel for the applicant sought some time for hearing on the judgment passed by the Hon'ble Supreme Court in **Shailendra Dania's** case and the Full Bench judgment of this Tribunal in **R.K. Mittal's** case. The respondents' counsel was also directed to produce the minutes of the review DPC dated 29.08.2011.

2. The main grievance of the applicant is that vide order dated 03.09.2014, his juniors Shri Ramesh Chand Tyagi and Shri Prem Kumar were given Current Duty Charge of Executive Engineer's post overlooking his grade. He has also challenged letter dated 11.11.2014 written to him by the Deputy Director, DDA stating therein as follows:

"2. As per the Review DPC held on 29.08.2011, Shri Ramesh Kumar Tyagi has been empanelled against the vacancies for the year 97-98 for degree holders (UR). The name of Shri Santosh Kumar Parashar, AE(C) does not appear in the list of 97-98 as he has been empanelled for the year 2004-05 as clarified above. Hence Shri Parashar has not been considered for CDC.

3. The CDC has been assigned to eligible AEs(C) as per the Review DPC held on 29.08.2011 for the year 1998-99 for UR category. It is thus clear that no junior has been given CDC."

3. The applicant drew our attention to the order dated 07.06.2005 by which the applicant had been promoted as Assistant Engineer w.e.f. 01.05.2005, i.e. after expiry of the penalty period. It

was also stated in the order that he will maintain his seniority above Mohd. Latafat Ali, who has since been promoted from 16.09.2004. This order was however subject to certain litigation pending before the Hon'ble High Court/Supreme Court as stated in para 7 of the order, which reads as under:

“7. Their promotion will be further subject to the final outcome in CW-2819/93 and CM No.4580/93 and CWP No.2243/99 Vinod Kumar & Ors. vs. DDA, Sh. D.S. Malik vs. D.D.A. pending in the High Court of Delhi and Order dt. 1.11.2004 in SLP No.2219-2222/2002, Shailender Dania & Ors. vs. S.P. Dubey & Ors.”

4. It is the contention of the learned counsel for the applicant that both S/Shri Ramesh Chand Tyagi and Prem Kumar are junior to Mohd. Latafat Ali and since by this order the applicant's seniority was maintained above Mohd. Latafat Ali, it is clear that by not granting Current Duty Charge to the applicant, the respondents have overlooked the applicant and, in fact, changed the seniority position, which could not have been done. In this regard, he relies on the following judgments:

- (i) Shailendra Dania & Ors. Vs. S.P. Dubey & Ors., (2007) 5 SCC 535.
- (ii) Full Bench judgment of this Tribunal in TA No.86/2009 and O.A. No. 82/2008 (R.K. Mittal & Ors. Vs. DDA & Ors.)

5. Learned counsel for the respondents states that SLP No.2219-22/2002 regarding Shailendra Dania was decided by the Hon'ble

Supreme court vide order dated 17.04.2007 in which basically it was held as follows:

“45. As a necessary corollary, we are of the view that the diploma-holder Junior Engineers who have obtained a Degree in Engineering during the tenure of service, would be required to complete three years' service on the post after having obtained a degree to become eligible for promotion to the higher post if they claim the promotion in the channel of degree-holder Junior Engineer, there being a quota fixed for graduate Junior Engineers and diploma-holder Junior Engineers for promotion to the post of Assistant Engineers.

6. It is further stated that in TA 86/2009 vide order dated 12.01.2011, the Full Bench of this Tribunal also reiterated the same principle in view of **Shailendra Dania's** judgment. He further states that there was a disciplinary proceeding pending against the applicant in which ultimately the punishment was imposed on him and after the punishment period was over, the applicant has been granted regular promotion as Assistant Engineer w.e.f. 01.05.2005 after holding review DPC on 29.08.2011.

7. The learned counsel for the respondents also placed before us Estt. Order dated 30.06.2016 in which they have promoted 87 officers including the applicant as Executive Engineer on ad hoc basis. This order does not, however, include Ramesh Chand Tyagi and Prem Kumar. It is stated that Shri Tyagi has retired and Shri Prem Kumar has been promoted prior to this.

8. Primarily the applicant's case is that while his seniority was protected vis-a-vis Mohd. Latafat Ali vide order dated 07.06.2005,

the respondents have changed the seniority position and denied him current duty charge while giving this to his junior, specifically to S/Shri Ramesh Chand Tyagi and Prem Kumar. This is being challenged.

9. Learned counsel for the respondents states that the order dated 07.06.2005 relied upon by the applicant was subject to outcome of **Shailendra Dania's** case. As a result of final decision by the Hon'ble Supreme Court in **Shailendra Dania's** case, the applicant was to be considered against the vacancy for 1996-97. But because of the charge sheet pending against him, which ultimately culminated in award of punishment, he could be considered for promotion as Assistant Engineer from 01.05.2005 and later on as Executive Engineer on ad hoc basis vide order dated 30.06.2016.

10. This O.A. was filed basically to challenge the order dated 03.09.2014, by which his alleged juniors had been given Current Duty Charge. Admittedly, the seniority of officers in the applicant's cadre is under challenge and has to be settled as per the decision of the Hon'ble High Court in the cases pending before it in this regard. Moreover, all the officers including the applicant have now been made Executive Engineers on ad hoc basis. Therefore, the OA has become infructuous and is, therefore, dismissed. As regards, the question of seniority, this should be a separate cause of action, as

stated above, and would be decided in accordance with the decisions of the Hon'ble High Court in this matter. No order as to costs.

OA 2640/2015

In view of order passed in OA 316/2015, this O.A. is also dismissed as the claim of the applicant in this case can also be decided only once the seniority issue is settled. No order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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