

**Central Administrative Tribunal
Principal Bench**

OA No.385/2016

Order Reserved on: 20.07.2017

Pronounced on:12.10.2017

***HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)***

Hari Mohan Meena,
S/o Shri Badri Prasad Meena,
R/o 19, Cannal View Apartment,
Sector-15, Rohini, Delhi.

-Applicant

(By Advocate: Shri Rajeev Sharma)

Versus

1. The Commissioner,
North Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre, 4th Floor,
J.L. Marg, New Delhi.
2. Additional Commissioner (Estt.),
North Delhi Municipal Corporation,
Central Establishment Department,
Dr. S.P. Mukherjee Civic Centre, 5th Floor,
J.L. Marg, New Delhi.
3. Director (Personnel),
North Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre, 13th Floor,
J.L. Marg, New Delhi.

-Respondents

(By Advocate: Shri R.N. Singh)

ORDER

Hon'ble Mr. K.N. Shrivastava, Member (A):

Through the medium of this Original Application (OA), filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

“(a) To issue direction to the respondents to conduct review DPC for the post of Assistant Engineer (Civil) and further direction may be issued to consider the name of the applicant.

(b) To issue direction to the respondent that applicant is entitled for all consequential benefits and accordingly direction may be issued to the official respondents to consider applicant for all consequential benefits including promotion to the next higher post.”

2. The factual matrix of this case is as under:

2.1 The applicant joined as Junior Engineer (Civil) on 12.10.2000 in the erstwhile Municipal Corporation of Delhi (MCD). The MCD was trifurcated in three different Municipal Corporations, namely, North Delhi Municipal Corporation, East Delhi Municipal Corporation and South Delhi Municipal Corporation. The applicant is currently serving in North Delhi Municipal Corporation. At the time of joining service, the applicant possessed diploma in Civil Engineering on the strength of which, he was appointed as Junior Engineer (JE) (Civil). Subsequently, in the year 2003 he acquired B.E. (Civil) degree but intimated of it to the MCD in the year 2005.

2.2 The next post to which the applicant could be promoted is that of Assistant Engineer (Civil) (AE). As per the qualifications prescribed, the post of JE could be filled up by appointing both

diploma and degree holders in Civil Engineering. For promotion to the next level of AE (Civil), the residency period for degree holder was three years and that for the diploma holders, five years, as indicated in Annexure A-3 regulations notified on 21.08.1979. The regulations further indicate that 50% of the posts of AE (Civil) are to be filled up by promotion failing which by direct recruitment and failing both by transfer on deputation/transfer and the remaining 50% is to be filled up by direct recruitment, failing which by transfer on deputation/transfer as per Annexure R-3 recruitment regulations notified on 21.08.1979. The said regulations were amended on 01.07.2004 and the ratio of 50:50 was changed to 75% by promotion and 25% by direct recruitment. As per the amended regulations, the residency period for degree holders has been increased from three years to six years and for diploma holders from five to eight years.

2.3 The MCD published final seniority list of JE (Civil) vide Annexure A-2 circular dated 09.03.2007 in which the applicant has been assigned seniority no.1024, whereas Shri Kesh Ram Meena and Shri Anil Kumar (both graduate Civil Engineers) have been assigned seniority no.1025 and 1027 respectively. The grievance of the applicant is that vide impugned Annexure A-1 order dated 01.12.2015, his juniors Shri Kesh Ram Meena and Shri Anil Kumar have been promoted to the grade of AE on the recommendations of a

review DPC in its meeting held on 14.06.2007 by the respondents, whereas he has been ignored for the said promotion.

2.4 Aggrieved by this action of the respondents, the applicant has filed the instant OA, praying for the reliefs as indicated in para-1 supra.

3. Pursuant to the notices issued, the respondents, entered appearance and filed their reply in which they have made the following important averments:

3.1 The applicant joined as JE (Civil) on 12.10.2000 as an ST candidate. In the seniority list of JE (Civil), his name stands at serial no.1024. He was possessing diploma in civil engineering at the time of his joining as JE (Civil).

3.2 As per the Recruitment Regulations (RRs) for the post of AE (Civil) notified on 01.07.2004, 75% of the posts are to be filled by promotion from amongst eligible JEs, failing which by direct recruitment, failing both by deputation/absorption and the remaining 25% by direct recruitment failing by deputation/absorption. The residency period for promotion for JE (Civil) with diploma in Civil Engineering is 08 years whereas that for JE (Civil) with degree in civil engineering is six years.

3.3 The applicant was considered for regular promotion to the post of AE (Civil) in two DPCs meetings held on 14.06.2007 and thereafter on 02.08.2007 but due to pendency of an RDA case

against him as also due to non-completion of his ACRs, his case was deferred for promotion on both the occasions. Furthermore, he had not completed the requisite residency period of eight years and hence was not eligible for promotion.

3.4 The applicant was considered for promotion by the Departmental Screening Committee in its meeting held on 15.04.2013 and was recommended for promotion to the post of AE (Civil), on ad hoc basis, and accordingly he was promoted vide order dated 25.04.2013 with immediate effect on conclusion of the pending RDA case.

3.5 The applicant appeared in the Bachelor of Engineering (BE) (Civil) Examination from Jamia Milia Islamia held in the year 2003 and acquired the BE (Civil) degree which has been duly recorded in his service record vide order dated 21.07.2015 issued by the Assistant Commissioner (Engg.) in the South Delhi Municipal Corporation.

3.6 The acquisition of BE (Civil) degree by the applicant in the year 2003 could be taken into consideration for his promotion to the post of AE (Civil) prospectively. He became eligible for promotion to the post of AE (Civil) in the year 2009 on completion of residency period of six years as prescribed for JE holding BE (Civil) degree.

3.7 Shri Kesh Ram Meena and Shri Anil Kumar (seniority no.1025 and 1027 respectively in the seniority list of JE (Civil) who were

junior to the applicant in the seniority list of JE (Civil), were graduate engineers and hence the residency period applicable to them was six years for promotion to the post of AE (Civil). Accordingly, they were considered for regular promotion w.e.f. 16.07.2007 by the review DPC in its meeting held on 22.09.2015.

4. The applicant has filed rejoinder to the reply of the respondents in which, besides reiterating the averments made in the OA, he has submitted that he was eligible for promotion to the post of AE (Civil) in 2007 itself and that 164 posts of AE (Civil) were available under the promotion quota against which, only 67 JEs (Civil) were promoted.

5. After completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 20.07.2017. Arguments of Shri Rajeev Sharma, learned counsel for the applicant and that of Shri R.N. Singh, learned counsel for the respondents were heard.

6. Shri Rajeev Sharma, learned counsel for the applicant submitted that the applicant had acquired BE (Civil) degree in the year 2003 itself. In terms of the judgment of the Hon'ble Supreme Court in the case of **M.B. Joshi and Others v. Satish Kumar Pandey and others**, [1993 Supp. (2) SCC 419], the applicant's experience of working as JE (Civil) prior to his acquiring of BE (Civil) degree in the year 2003 is also to be reckoned for determining his

residency period. He contended that the ratio of **M.B. Joshi and others** (supra) has been reiterated by the Hon'ble Apex Court in the case of **D. Stephen Joseph v. Union of India and others**, [(1997) 4 SCC 753]. He further argued that a three-judge Bench of the Hon'ble Apex Court, in the case of **Anil Kumar Gupta and others v. Municipal Corporation of Delhi and others**, [(2000) 1 SCC 128], has also adopted the ruling in the case of **M.B. Joshi and others** (supra) and **D. Stephen Joshi** (supra).

6.1 Concluding his arguments, Shri Sharma submitted that the applicant has been exonerated of the RDA case vide order dated 08.02.2013 and hence in terms of the ratio of law laid down in the aforementioned judgments of the Hon'ble Apex Court, the applicant is entitled for promotion to the post of AE (Civil) from the date his juniors Shri Kesh Ram Meena and Shri Anil Kumar were promoted.

7. Shri R.N. Singh, learned counsel for the respondents submitted that the applicant could not have been considered for promotion to the post of AE (Civil) when Shri Kesh Ram Meena and Shri Anil Kumar were promoted due to the pendency of the RDA case against him. He, however, has been promoted as AE (Civil), on ad hoc basis, vide order dated 21.07.2015 with immediate effect on conclusion of the RDA case. Since he has been exonerated of the RDA case on 08.02.2013 and hence his promotion becomes effective from that date.

8. We have considered the arguments of the learned counsel for the parties and have perused the pleadings and documents annexed thereto. Admittedly, the applicant joined the erstwhile MCD as JE (Civil) on 12.10.2000 as an ST candidate. On that date he was possessing diploma in civil engineering. He subsequently acquired BE (Civil) degree from Jamia Milia Islamia in the year 2003, intimation about which was given by the applicant to the MCD in the year 2005. However, the respondents have recorded this factum of his acquisition of BE (Civil) degree much belatedly on 21.07.2015.

9. As per the amended RRs, 75% posts of AE (Civil) are to be filled by promotion from the cadre of JE (Civil) and the remaining 25% by direct recruitment. The RRs prescribe residency period of six years and eight years for JE (Civil) possessing degree in civil engineering and diploma in civil engineering respectively. It is well settled that in case of a JE (Civil) who initially joined the post possessing diploma in civil engineering and later acquired BE (Civil) degree, is entitled for counting his service as JE (Civil) prior to his acquiring the BE (Civil) degree towards his residency period for promotion to the post of AE (Civil). This issue is no more *res integra*. This issue was initially considered by the Hon'ble Apex Court in the case of **N. Suresh Nathan v. Union of India**, [1992 SCC (L&S) 584], in which it was held that service in the grade of as a diploma holder prior to obtaining the degree cannot be counted as service in the grade with

a degree. This judgment has been overruled by the Hon'ble Apex Court in its subsequent judgment in the case of **M.B. Joshi and others** (supra), and held as under:

“In these circumstances mentioned above, we are clearly of the view. that the Tribunal was wrong in determining the seniority from the date of acquiring degree of engineering and it ought to have been determined on the basis of length of service on the post of Sub-Engineer and the State the basis of length of service on the post of Sub-Engineer and the State Government was right in doing so and there was no infirmity in the orders passed by the Government. In the result, we allow these appeals, set aside the orders of the Tribunal dated 15.10.1991, 28.11.1991 and 17.9.1991 and 8upheld the orders passed by the Government in all these cases.”

10. The Hon'ble Apex Court in **D. Stephen Joseph** (supra) and has observed as under:

“2...The short question that arises for decision in this case is whether for promotion to the post of Assistant Engineer in the 50% promotion quota reserved for the person possessing, degree in Electrical Engineering from a recognised University or an equivalent with three years regular service in the grade of Junior Engineers, in the electricity department, Government of Pondicherry, three years experience as Junior Engineer in the grade is to be counted from the date of acquisition of the degree in Electrical Engineering or the length of service in the grade of Junior Engineers is to be reckoned if the incumbent at the time of promotion to the 30% quota also possesses degree in Electrical Engineering.

3. The Central Administrative Tribunal, Madras Bench by the impugned order has held that the respondents who are holding the post of Junior Engineers and hare three years' regular service in that grade and also possess degree in Electrical Engineering will be entitled to get such promotion to 50% reserved quota and their experience of three years is not to be reckoned from the date of acquisition of the degree in Electrical Engineering Such decision of the Central Administrative Tribunal is being impugned in this case.

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5. It appears to us that the State Government is labouring under a wrong impression as to the applicability of the past practice as indicated that past practice should not be upset provided such practice conforms to the rule for promotion and

consistently for some time past the rule has been made applicable in a particular manner. In our view, the decision in Nathan's case only indicates that past practice must be referable to the applicability of the Rule by interpreting it in a particular manner consistently for some time. Any past practice dehors the Rule cannot be taken into consideration as past practice consistently followed for long by interpreting the Rule. It may be indicated here that a similar question also came up for consideration before this Court in M.B. Joshi and Ors. Vs. Satish Kumar Pandey and Ors. (1993 Suppl. (2) SCC 419). The decision in Suresh Nathan's case was distinguished in the its of that case and it was indicated that when the language of the Rule is quite specific that if a particular length of service in the feeder post together with educational qualification enable a candidate to be considered for promotion, it will not be proper to count the experience only from the date of acquisition of superior educational qualification because such interpretation will violate the very purpose to give incentive to the employee to acquire higher education."

11. The Hon'ble Apex Court by a subsequent judgment in the case of **Anil Kumar Gupta** (supra), has observed as under:

"23. The above ruling in M.B.Joshi was followed in D.Stephen's case. In that case, this Court again distinguished N.Suresh Nathan's case. This Court however cautioned that any practice which was de hors a Rule could be no justification for the department to rely upon. Such past practice must relate to the interpretation of a rule in a particular manner. This Court then followed M.B.Joshi's case as being one where the language of the rule was specific that:

"if a particular length of services in the feeder post together with educational qualification enables a candidate to be considered for promotions, it will not be proper to count the experience only from the date of acquisition of superior educational qualification because such interpretation will violate the very purpose to give incentive to the employee to acquire higher education".

This decision in D. Stephen's case also supports the case of the respondents.

24. Therefore, on the language of the notification dated 30.6.89, we are of the view that the 2 years professional experience need not entirely be experience gained after obtaining the degree.

25. It is true that in one of the counter-affidavits in CWP 606/1985, the MCD took the view that the experience ought to be after acquiring degree. But the clarification of the UPSC dated

13.9.85 addressed to the MCD made it clear that the entire service including the service rendered before obtaining degree was to be taken into consideration. This letter has, in fact, been relied upon by the learned Single Judge of the High Court for holding that service rendered before acquiring the degree was to be counted.

26. For the aforesaid reasons, we hold that the service rendered by the Diploma holders before obtaining degree can also to be counted.”

12. In view of the ratio of law laid down by the Hon’ble Apex Court in the above judgments, we are of the clear view that the period of service rendered by the applicant as JE (Civil) prior to his acquiring BE (Civil) degree is also to be reckoned for determining his residency period for promotion to the post of AE (Civil). We also take into consideration the fact that the applicant has been discharged of the RDA case and an office order to this effect dated 08.02.2013 (page 80) has been issued by the South Delhi Municipal Corporation where the applicant was apparently working then. It is also an admitted fact that the applicant was senior to Shri Kesh Ram Meena and Shri Anil Kumar in the Annexure A-2 seniority list of JE (Civil) published by the respondents. Since Shri Kesh Ram Meena and Shri Anil Kumar, both being junior to the applicant have been promoted by the Annexure A-1 order dated 01.12.2015 w.e.f. 16.07.2007 to the post of AE (Civil), the applicant is also entitled for such promotion from the same date.

13. In the conspectus of the discussions in the foregoing paras, this OA is allowed. The respondents are directed to antedate promotion of the applicant to the post of AE (Civil) to 16.07.2007,

the date when his juniors Shri Kesh Ram Meena and Shri Anil Kumar were promoted to the post of AE (Civil).

14. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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