

**Central Administrative Tribunal
Principal Bench**

OA 1318/2015

New Delhi this the 13th day of August, 2015

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Shri V.K. Kadyan
S/o Late Shri Kewal Singh
R/o B-418, Meera Bagh,
Paschim Vihar,
Delhi

..... Applicant

(Through Shri Rajeev Sharma, Advocate)

Versus

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

.... Respondents

(Through: Shri R.N. Singh, Advocate)

ORDER**Mr. P.K. Basu, Member (A)**

The applicant was appointed as Assistant Engineer (AE) (Civil) in the year 1990 in the erstwhile Municipal Corporation of Delhi (MCD). In 2012, MCD was divided into three and the applicant is now working as Executive Engineer in East Delhi Municipal Corporation on *ad hoc* basis. After five years of service as AE (Civil), the applicant became eligible to be considered for promotion as Executive Engineer (Civil). However, regular annual DPC had not been convened by the department and as a result, eligible persons have been promoted as Executive Engineer (Civil) on *ad hoc* basis. The applicant was promoted on *ad hoc* basis as Executive Engineer w.e.f. 8.04.2004 and was promoted on regular basis as Executive Engineer (Civil) on 8.09.2008. Applicant further states that he was falsely implicated in five different vigilance cases between February 2006 and January 2011 but was absolved in one and exonerated in other four. It is stated by the learned counsel for the applicant that in 2006, sixteen more officers including the applicant and one Shri M.M.S. Dahiya were implicated in a departmental case and were terminated from service. On appeal to the Lieutenant Governor, who was the appellate authority, their termination from service was converted into compulsory retirement on 3.04.2007. It is further stated that the order of the appellate authority was challenged before this Tribunal in 2009 and the impugned order of the appellate authority dated 3.04.2007 was set aside by the Tribunal as illegal and

unconstitutional and all consequential benefits including back wages were granted. It is added that the matter then went before the Hon'ble High Court, which delivered its judgment on 9.09.2010 declaring the impugned order of compulsory retirement as illegal. However, liberty was granted to the respondents to conduct departmental inquiry. The applicant was allowed to join the department as Executive Engineer (Civil) on 10.09.2010. It is stated that departmental inquiry was conducted wherein the applicant was exonerated by the competent authority on 11.05.2012, which was conveyed vide order dated 14.05.2012. According to the applicant, the past service was given all advantages and relevant portion of the order is reproduced below:

- “1. The said “Deemed Suspension” period from 7/4/2006 to 9/9/2010 in respect of Sh. Vijay Kadyan, Executive Engineer (Lab) shall be treated as having been spent on duty for all intents and purposes.
2. Shri Vijay Kadyan, Executive Engineer (Lab) will be entitled for full pay and allowances for the period from 7/4/2006 to 9/9/2010 to which he would have been entitled had he not been dismissed from Municipal Services subject to furnishing of “Non Employment Certificate” by him.

The necessary certificate was furnished.”

2. The first DPC was conducted in 2008 and applicant along with identically placed person Shri M.M.S. Dahiya was considered. Both the applicant and Shri Dahiya were declared ‘unfit’ on account of punishment of compulsory retirement. Subsequently, the applicant came to know that the name of Shri

Dahiya has been forwarded to the Union Public Service Commission (UPSC) for consideration for promotion as Executive Engineer and Shri Dahiya was promoted as such. After about a week, Shri Dahiya was further promoted to the next higher post of Superintending Engineer (SE). The applicant thereafter filed OA 1640/2013 and vide order dated 23.08.2013, the respondents were directed to hold review DPC and consider the name of the applicant. It was further directed that if the applicant was found fit for promotion, he will be given consequential benefits as the same had been given to his juniors. In compliance of the said order, the case of the applicant was considered by the DPC and the applicant was found fit for promotion. Accordingly, vide office order dated 11.07.2014, the applicant was placed at the appropriate place in the seniority list of Executive Engineer (Civil) and has been assigned seniority at serial 125-A.

3. The applicant came to know that 35 officers are working as SE (Civil) on *ad hoc* basis or look after/current duty charge basis and three officers out of these 35 namely Shri R.P. Garg, Shri K.P. Singh and Shri Susheel Kumar are not promoted as Executive Engineer (Civil) on a substantive basis. It is contended that the status of these three officers is much inferior than the applicant as these three officers substantively hold a lower post i.e. AE (Civil) and hence cannot be equated with the applicant as far as the seniority list of Executive Engineer (Civil) is concerned. It was further stated that MCD's circular dated 20.07.1998

stipulates that such *ad hoc*/current charge appointment should be limited to a period of one year and should automatically cease on the expiry of the terms of appointment or one year from the date of appointment, whichever is earlier;; rule of seniority-cum-fitness should be followed. These three officers were assigned the charge of the post of SE (Civil) in 2007 and therefore, should not have been continued beyond 2008. Moreover, an officer who is not a regular Executive Engineer is not even eligible to be assigned charge of the post of SE. It was further pointed out that Office Order dated 10.12.2012 by which certain officers have been promoted to the grade of SE on *ad hoc* basis, is subject to the following condition:-

“The adhoc appointment will be further subject to the condition that as and when any senior Ex.Engineer (C) becomes eligible for promotion on adhoc basis to the grade of SE (C) consequent upon opening of sealed over or on receipt of decision of UPSC in the case of review DPC, as the case may be, the junior most SE (C) will be reverted to accommodate his senior.”

4. Thus, even as per this stipulation, once the applicant is promoted, the junior most amongst the three would get reverted. This is stated in the context of the defence taken by the respondents that at present there are no vacancies in the post of SE because only when three vacant posts of Chief Engineer (Civil) are filled up by the incumbents holding the post of SE, will the vacancy arise in the cadre of SE. However, the Hon'ble High Court of Delhi in W.P (C) 5356/2014 and C.M.No.10664/2014 has passed status quo order in respect of promotion to the post of Chief Engineer (Civil) on current duty

charge and, therefore, in view of this order, promotions to the post of Chief Engineer (Civil) cannot be done. As a result, vacancies in the cadre of SE (Civil) may not occur. In this background, the present OA has been filed seeking the following reliefs:

- (a) to issue direction to the respondents to convene meeting of Screening Committee and consider the name of the applicant to the post of S.E.
- (b) to issue direction to the respondents to issue promotion order of the applicant against the post of S.E.

5. It was also emphasized by the learned counsel for the applicant that the Government is supposed to act as model employer and here it is found that instead of giving the applicant his due, he was involved in five cases, in all of which the applicant got exonerated but even thereafter, he has been denied his promotion. Out of three officers named above, Shri K.P.Singh and Shri Sushil Kumar challenged withdrawal of their ad hoc promotion to the post of SE and this Tribunal had quashed the withdrawal order dated 22.11.2010. Therefore, the respondents' case is that they had to implement that order and since the third person, namely, Shri Susheel Kumar was similarly placed, the order has been implemented in his case also and now when all the posts of SE are filled, the respondents take the plea of lack of vacancies.

6. Learned counsel for the respondents has raised the plea that since three officers named above are functioning as SE and

they may be affected by the decision in this case, this OA suffers from non-joinder of necessary parties as they have not been impleaded as respondents. Therefore, the present OA should be dismissed on this ground itself. Moreover, it is argued that these persons have been given promotion only on the basis of the order of the Tribunal dated 21.12.2010 in OA 3969/2010, **K.P. Singh and anr. Vs. MCD** and, therefore, it is not correct to state that they have been illegally or irregularly retained as Superintending Engineer.

7. On the other hand, the learned counsel for the applicant contended that the Tribunal had passed its order in K.P. Singh (supra) in the light of the fact that administrative problems will be created, as is clear from the portion of the order reproduced below:

“13. In view of the discussion made above, this Original Application has to be allowed. Before we may, however, part with this order, we would like to mention that it is the specific case of the applicants that there are number of Superintending Engineers holding such post on ad hoc basis and against whom charge-sheets have been issued in departmental proceedings or criminal cases where charges have been framed are pending, and such proceedings came to be initiated against them within a year of their promotion, but no action has been taken against them. We are distressed to note that even though, no dispute on facts has been raised, it has been stated that it may not be possible to revert so many people as that may create administrative problems. Even though, if the respondents are illegally carrying on with the promotions of others, it may not become a ground to set aside the reversion of the applicants as negative discrimination cannot be pleaded, but we cannot refrain from observing that if the applicants are to be treated by reverting them, the only reason that so many people have to be reverted, may not be a ground so as not to revert them. We may also mention that even though clear

directions came to be given by us in OA No.3219/2009 that regular DPC should be held within three months, nothing in that regard has been done as yet. We may also mention that the status of the enquiries being conducted against the applicants even after more than three years, is not known and the respondents have not even thought it appropriate to mention that enquiries pending against the applicants would come to an end in near future.”

8. However, all that is to be done is that the last person amongst 33 has to be reverted and the applicant placed at the appropriate place amongst those 33 and definitely above the two remaining.

9. The learned counsel for the applicant further pointed out that one Shri Rambir Singh Bansal, who is similarly placed like the applicant, had approached the Hon’ble High Court of Delhi and the High Court vide order dated 27.04.2015 directed as follows:

“Considering the fact that the petitioner is retiring on 30th April, 2015 and taking into consideration the stand of the respondents in their counter affidavit and the minutes of the Screening Committee dated 17.12.2014 stating that the petitioner is eligible for ad hoc promotion to the post of Superintending Engineer (Civil) after 08.09.2013, we direct the respondents to immediately hold a special meeting of the departmental Screening Committee within a period of two days from the date of this order so that the decision to promote the petitioner to the said post of SE (C), if he is otherwise found eligible, is taken before the date of his superannuation.”

10. In compliance of the above quoted directions, vide order dated 29.04.2015, Shri Rambir Singh Bansal has been promoted to the post of SE. This order does not indicate any reversion

within the 33 filled up posts, demonstrating double standard adopted by the respondents.

11. Needless to say, there is utter chaos in the cadre management in the respondents' office. Sensitive posts of Executive Engineer, SE and Chief Engineer are mostly being manned on *ad hoc*/ current duty charge basis apparently from decades together. It is high time that the respondents put their house to order. However, we are concerned here with the grievance of the applicant and it is clear beyond doubt that the respondents have created a complete mess even in this case, for the following reasons:

- (a) All the three, namely Shri R.P. Garg, Shri K.P. Singh and Shri Susheel Kumar, who were not even Executive Engineers, were given charge of ad hoc SEs and all 33 vacancies filled up thus. On that ground, the applicant was denied his due promotion whereas, as per instructions, the applicant should have been promoted by reverting the last person in the list, who is junior to the applicant;
- (b) Having given promotion to Shri Rambir Singh Bansal, there is no ground on which the respondents can deny promotion to the applicant especially because while giving promotion to Shri Bansal, the question of vacancy was never raised by the respondents; and
- (c) Since the three officers referred to above are functioning as SE on *ad hoc* basis as a result of CAT

order, even if the respondents cannot revert them, they may create a supernumerary post and place the applicant at the appropriate level of seniority as SE and simultaneously sort out the matter of the three. But this cannot form the basis for denying the legitimate promotion of the applicant in the light of the fact that the respondents have promoted similarly placed person Shri Rambir Singh Bansal.

12. We are of the opinion that the applicant has been denied justice by the respondents and that needs to be redressed. We, therefore, direct that the respondents shall immediately hold a meeting of the Departmental Screening Committee within a period of one week from the date of this order (since the applicant is said to be retiring on 31.08.2015) so that the decision to promote the applicant to the post of SE (Civil), if he is otherwise found eligible, is taken before he retires on superannuation and implemented. With these directions, the OA is disposed of. No costs.

(P.K. Basu)
MEMBER (A)

(V. Ajay Kumar)
MEMBER (J)

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