

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.100/1151/2013

Friday, this the 12th day of August 2016

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

Naresh Mehta
S/o Shri I.S. Mehta
E-33, Ground Floor
Rajouri Garden,
New Delhi-110027

(Mr. T.N. Tripathi and Mr. Ramesh Shukla, Advocates)

....Applicant

Versus

North Delhi Municipal Corporation
Through its Commissioner
Civic Centre, Mint Road,
New Delhi-110002

(Mr. R. K. Jain, Advocate)

....Respondent

O R D E R (ORAL)

Justice Permod Kohli:

The applicant was initially appointed as Junior Engineer (Mechanical) under the then Municipal Corporation of Delhi (MCD) on regular basis in the year 1983. He possessed the diploma in Mechanical Engineering. Vide order dated 19.09.2000, the applicant, along with two other Junior Engineers (Mechanical) in the MCD, was appointed to the post of Assistant Engineer (Auto) in the pay scale of ` 6500-10500 on deputation basis initially for a period of one year. The applicant's name figured at Sl. No.2 in the aforesaid order. It is admitted case of the parties that since then

the applicant is continuing on the post of Assistant Engineer (Auto) in the MCD, presently the North Delhi Municipal Corporation.

2. Earlier the applicant had filed Writ Petition (Civil) No.11324/2006. The said Writ Petition was transferred to this Tribunal vide Order dated 29.01.2009. It came to be registered as T.A. No.339/2009 and disposed of vide Judgment dated 23.11.2009 with the directions to the respondents to process the claim of the applicants therein in view of the observations made above within a period of three months from the date of receipt of a copy of the Order. It is relevant to notice that the applicant had challenged the order dated 19.09.2000 whereby he was treated as Assistant Engineer (Auto) continuously on deputation.

3. Mr. R.K. Jain, learned counsel for respondent has not been able to say anything about the compliance of the directions issued by the Tribunal. In the present O.A., the applicant is praying for the following directions:-

“(A) It is respectfully prayed that this Hon’ble Tribunal may graciously direct the Respondent to delete the word deputation from the appointment letter dated 19-9-2000 issued in favour of the applicant to the post of Assistant Engineer (Auto).

(B) That this Hon’ble Tribunal may graciously be pleased to further direct the Respondent to treat the appointment of the applicant in the post of Assistant Engineer (Auto) as an appointment made on regular basis.

(C) That Hon’ble Tribunal may further graciously be pleased to direct the respondent to include the name of the applicant in final seniority list of the A.E. (Auto) by keeping his name at appropriate place in the seniority list.

(D) That this Hon’ble Tribunal may direct the respondent to accord affective hearing to the applicant in consonance and in compliance with the Principles of Natural Justice before passing any orders in this regard.

(E) This Hon’ble Tribunal may award costs and damages.

(F) Please call for records of the case.

(G) Any other or further order or orders more than one nature as this Hon'ble Tribunal may feel deem fit and proper in the interests of justice."

4. We have heard the learned counsel for parties. Recruitment to the post of Assistant Engineer (Auto) in the MCD is governed by statutory rules, as notified by the Government on 27.11.1984 (Annexure A-3). Schedule appended to the Recruitment Rules provides the qualification and mode of appointment / promotion to the post of Assistant Engineer (Auto). Clauses 6 and 7 of the Schedule deal with the mode of appointment and qualifications for direct recruitment, whereas Clauses 10 and 11 provide for the appointment to the post of Assistant Engineer (Auto) from promotional mode. Under Clause 10, 33-1/3% quota is prescribed for promotion, failing which by transfer on deputation, whereas 66.2/3% provided for direct recruitment from the feeding category of Forman. Under Column 11, a Foreman (Auto) with three years regular service in the grade in the case of those possessing degree in Mechanical or Automobile Engineering from a recognized University or equivalent and seven years regular service in the grade in the case of those possessing diploma in Mechanical or Auto Engineering from a recognized University/Institution or equivalent is eligible for promotion. For transfer on deputation (including short term contract), officers under the Central/State Government/Union Territory/Public Undertaking/ Semi-Government/ Autonomous or statutory Organization/MCD and its Undertakings holding the post in the rank of Junior Engineer or equivalent and those holding post in the rank of Junior Engineer with possession of degree in Mechanical or Auto

Engineering from a recognized University or equivalent and seven years regular service in the grade in the case of those possessing diploma in Mechanical or Auto Engineering from a recognized University/Institution or equivalent are eligible. It is provided that the period of deputation shall not exceed three years.

5. It is not in dispute that the applicant possesses the essential qualification, i.e., diploma in Mechanical Engineering. The Rule prescribes the appointment to the post of Assistant Engineer (Auto) by promotion, failing which by transfer on deputation. In the counter affidavit filed on behalf of the respondent, it is specifically mentioned that in the year 2000, 5 vacant posts of Assistant Engineer (Auto) under promotion quota in MCD were available. It is stated that against 5 posts, only 2 Foremen (Auto) were found eligible for promotion to the post of Assistant Engineer (Auto) as per the Recruitment Rules. It is further stated that since there was no candidate in the feeder cadre for filling up the post of Assistant Engineer (Auto) under promotion quota, the Department decided to fill up remaining 3 posts on deputation basis from the departmental Junior Engineers (Mechanical) as allowed in the Recruitment Rules of Assistant Engineer (Auto). The applicant was thus appointed to the post of Assistant Engineer (Auto) in the pay scale of `6500-10500 on deputation basis initially for a period of one year. It is further stated that deputation has been extended from time to time and lastly up to 17.09.2009.

6. Although the applicant was appointed as Assistant Engineer (Auto) on deputation basis initially for a period of one year, it is admitted by the respondent that his appointment was against clear vacant post. The

Recruitment Rules clearly prescribe deputation as one of the modes of appointment to the post of Assistant Engineer (Auto). The intention of the Department was absolutely clear that those vacancies were to be filled up by deputation as no eligible candidate (Foreman) was available in the feeder cadre, except 2 against 5 available vacancies. Even in the counter affidavit the factum of eligibility of the applicant and possession of the necessary qualifications is not disputed. To the contrary, the respondent-North DMC has clearly stated that since no eligible candidate from promotional quota was available, the applicant was appointed against the available vacancy on deputation, which is one of the prescribed modes under the Rules. As a matter of fact, it appears that the appointment was on regular basis to the post of Assistant Engineer (Auto), as the applicant was duly qualified. He is continuing for the last sixteen years. The respondent has nowhere stated that it intends to repatriate the applicant. Otherwise also, it is belated stage. When the applicant has served as Assistant Engineer (Auto) for a period of sixteen years, his repatriation to the post of Junior Engineer (Mechanical), whereas his juniors might have been promoted in their own cadre, would be doing injustice to the applicant. Apart from this, the earlier directions of the Tribunal in T.A. No.339/2009 to process the claim of the applicants therein have not been complied with, which seems to have forced the applicant to file the present O.A.

7. In the above circumstances, O.A. is allowed. The respondent is directed to treat the applicant having been regularly appointed to the post of Assistant Engineer (Auto) with effect from the date of his joining as Assistant Engineer on deputation basis vide order dated 19.09.2000 against the promotional quota of 33-1/3% as prescribed under the

Recruitment Rules. He will be entitled to seniority in the cadre of Assistant Engineer (Auto) with effect from the above said date. No costs.

(K.N. Shrivastava)
Member (A)

August 12, 2016
/sunil/

(Justice Permod Kohli)
Chairman