

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

OA No.1816/2016

This the 11th of July, 2016

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

Ashok Kumar Meena
Executive Engineer(Civil)
Aged about 47 years,
S/o Shri Ram Niwas Meena,
R/o B-402, Plot No. 7B, Manisha Tower,
Sec-23, Dwarka,
Delhi-1100177 Applicant

(By Advocate: Shri Arun Kumar Panwar)

Versus

1. The Commissioner,
North DMC,
S.P.M. Civic Centre
New Delhi-110002.

2. The Commissioner
South DMC,
S.P.M. Civic Centre
New Delhi-110002. Respondents

ORDER(ORAL)

By Hon'ble Mr.Justice Permod Kohli:

The applicant is aggrieved of office order No. DA-V/Engg.(HQ)/NDMC/2015/475 dated 01.12.2015 whereby pursuant to directions contained in order passed by the Tribunal in OA-1276/2012 in the matter of **Ajay Kumar Aggarwal & Anr.Vs. MCD & Ors.**, review DPCs were held for promotion to the posts of Asstt. Engineer (Civil) in respect to the

officers promoted from 1992 to 2007. The applicant was recommended to be promoted as Asstt. Engineer (Civil) on 16.07.2007 in the review DPC held on 14.06.2007) at Sl.No. 58 under the common seniority list No.985. Consequent upon said order the final seniority list of AE's has been notified vide circular dated 10.03.2016. In the final seniority list the applicant is shown at sl. No.326 with common seniority No.646 with his date of promotion shown as 16.07.2007. The final seniority list has been issued after inviting objection on 21.12.2015. The circular further reveals that after considering the objection received in this regard, the revised final seniority list of AE's (Civil) has been circulated. Admittedly, the applicant filed objection to the provisional seniority list referred to herein above vide his representation dated 07.12.2015 (Annexure A-17/Colly).

2. By virtue of the revised final seniority list, the applicant has been relegated to much lower position, whereas, the case of the applicant is that he was earlier promoted as AE (Civil) as per office order dated 06.04.2011 (Annexure A-10). In this order on the basis of review DPC for the DPC held on 25.01.2002, the applicant was shown to have been promoted w.e.f. 28.01.2002 at Sl.5 with seniority No.985. The entire case of the applicant is that vide office order dated 06.04.2011 his promotion was given effect from 28.01.2002 and this order has not been challenged by anybody. Further the subsequent impugned order dated 01.12.2015 and consequential circular dated 10.03.2016 are all illegal. His further contention is that the applicant was not a party to the judgment in the case of **Ajay Kumar Aggarwal** (supra) and, therefore, he could not have been affected by any directions issued in the said judgment. Thus any further action on the part of the respondents to disturb the said seniority list at his back without giving him opportunity is bad in law.

3. Even when the seniority of the applicant was reconsidered and altered, he was aware that he was not a party to the judgment in **Ajay Kumar Aggarwal** (supra) and at this belated stage it is not open for him to say that the directions have been issued at his back and his date of promotion has been altered in violation of principles of natural justice. It is admitted position that he had filed objections to the provisional revised seniority list. From the objections it also appears that he was aware of the judgment passed in **Ajay Kumar Aggarwal** (supra) case which became the basis for the review DPC. He however, chose not to challenge the said judgment, pursuant to which the competent authority to held review DPCs, which culminated in passing the impugned order dated 01.12.2015, as a result whereof the impugned circular dated 10.03.2016 has been issued. In any case, number of Asstt. Engineers have been placed above the applicant in the final seniority list. If the applicant is to be considered to have been promoted w.e.f. 28.01.2002, he would technically jump from Sl.No.326 to much higher position at Sl.No.261. All those persons who became senior to him have not been impleaded as party respondents. Learned counsel for the applicant however, insisted that they are not necessary parties. In support of his contention, he has relied upon judgment of the Apex Court **State of Rajasthan vs. Ucchab Lal Chhanwal** (2014) 1 SCC 144. His contention is that since the action of the respondents is in question and the consequence may be re-settlement of seniority, such persons whose seniority may be incidentally adversely affected, are not required to be impleaded as party respondents. Learned counsel has relied upon the judgment of the Apex Court in **J.S.Yadav vs. State of Uttar Pradesh and Another** reported in (2011) 6 SCC 570 wherein the following observations were made:-

“No order can be passed behind the back of a person adversely affecting him and such an order if passed, is liable to

be ignored being not binding on such a party as the same has been passed in violation of the principles of natural justice.”

4. Considering the aforesaid observations Hon’ble Supreme Court further held as under:

“15. In the case at hand the dispute relates to promotion which will have impact on inter se seniority. The learned counsel for the respondents assiduously endeavoured to convince us that they are agitating the grievance with regard to their promotion and it has nothing to do with the persons junior to them who had been promoted. Despite the indefatigable effort, we are not persuaded to accept the aforesaid proponement for once the respondents are promoted the junior who have been promoted earlier would become juniors in the promotional cadre and they being not arrayed as parties in the *lis*, an adverse order cannot be passed against them as that would go against the basic tenet of the principles of natural justice. On this singular ground the directions issued by the writ court as well as the Division bench pertaining to grant of promotion to the respondents are quashed. To elaborate, as far as the conclusion of the High Court relating the circular is concerned, it is unexceptionable and we concur with the same.”

5. It is thus clear from the opinion of the Hon’ble Supreme Court as indicated in the above paras that any order adverse to a person cannot be passed without such person being party to the *lis*, as it would be against the basic tenet of the principles of natural justice and not sustainable in law. We have no option but to dismiss the Application in *limine* for not impleading necessary parties. Ordered accordingly.

(K.N. Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

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