

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1841/2015

New Delhi this the 24th day of September, 2015

Hon'ble Shri A.K. Bhardwaj, Member (J)
Hon'ble Shri K.N. Shrivastava, Member (A)

Shri Sudhir Mehta,
S/o Late Shri R.S.Mehta,
R/o H.No.4018/D-4, Vasant Kunj,
New 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. The Commissioner,
South Delhi Municipal Corporation,
Dr.S.P.Mukherjee Civic Centre, 9th Floor,
J.L.Marg, New Delhi.
3. The Commissioner,
East Delhi Municipal Corporation,
419, Udyog Sadan, Patparganj,
Industrial Area, Delhi-92
4. The Additional Commissioner (Estt),
North Delhi Municipal Corporation,
Central Establishment Department,
Dr.S.P.Mukherjee Civic Centre, 5th Floor,
J.L.Marg, New Delhi.
5. Director (Personnel),
North Delhi Municipal Corporation,
Dr.S.P.Mukherjee Civic Centre, 13th Floor,
J.L.Marg, New Delhi.

.. Respondents

(By Advocate Shri S.M.Verma and Shri R.V.Sinha with Shri
Amit Sinha and Suprabha K.Roshan)

ORDER

Hon'ble Mr. A.K.Bhardwaj, Member (J):

The facts of the case captioned in the OA are that the applicant joined MCD as Assistant Engineer (Civil) w.e.f. 26.02.1991 and on his acquittal from a criminal case vide judgment dated 16.09.2014, he was declared regular incumbent of the post of Executive Engineer w.e.f. 8.09.2008. In the wake his seniority in the grade of Executive Engineer was fixed at serial no. 121-A i.e. below the name of Shri Rajesh Khanna, seniority no. 121 and above Shri Ajay Kumar Mittal. The grievance espoused by him in the present OA is that when 6 of his juniors are working as Superintending Engineer (Civil) on ad hoc basis/current duty charge/look after basis, he is kept on the lower post of Executive Engineer. The stand taken by the applicant in this regard in his OA read thus:-

“4(v). That grievance of the applicant is that approximately 6 junior officers are working as Superintending Engineer (Civil). The Srty.No. of junior most officer who is working as Superintending Engineer (Civil) is 122-124-A and 3 officers who are not even regular Executive Engineer are working as Superintending Engineer since 2007. As mentioned above number of office orders have been issued and respondent was conscious about the O.M. dated 14.09.1992, accordingly one of the condition in the Office Order under which aforesaid junior officers have been promoted is that such promotion are subject to that as and when any senior Executive Engineer become eligible for promotion on ad hoc basis to the grade of Superintending Engineer (Civil) consequent upon opening of sealed cover, the junior most Superintending Engineer will be reverted to accommodate the senior. One of such order dated 10.12.2012 is annexed herewith and marked as Annexure No.4.

4 (vi) That respondents are required to act like a model employer and they have to take decisions in accordance with the law and rules as declared by DOPT. Accordingly, in spite of the acquittal of the applicant in the criminal case in which he was falsely implicated he has been further being put in disadvantageous position as he is working under his juniors.

It is very old practice in the respondent Corporation of avoiding regular DPC and assigning current/look after/adhoc charge of the higher post including the post of Superintending Engineer (Civil). This issue was under consideration before the Division Bench of Hon'ble Delhi High Court in CWP No. 4598/95, Kapoor Chand Vs. MCD and Ors. and the same was decided vide judgment dated 17.4.1998. In compliance of the decision of Delhi High Court, Circular dated 20.07.1998 has been issued by the erstwhile Corporation which is applicable on all the respondent Corporations. The relevant portion of the Circular is as under:-

- i) Adhoc/current charge appointment/promotions shall be limited to a period of one year only and shall automatically cease on the expiry of the terms appointed or one year from the date of appointment-whichever be earlier.
- ii) Rule of seniority-cum-fitness shall be followed (while making any adhoc arrangements)
- vi) Such adhoc appointments/promotions shall not be continued or renewed as camouflage on regular appointments.
- vii) MCD would observe the Government instructions regarding initiation of regular appointments/promotions at least four months prior to anticipated vacancies.
- viii) Intimation shall be given to UPSC of all such appointments/promotions."

According to the learned counsel for applicant in terms of Office Order No F.7(10)/CED(III)/Pt.VI/86/2007/1395 dated 10.12.2012, the ad-hoc appointment of EE(Civil) would be

subject to the condition that as and when any senior Ex.Engineer (Civil) becomes eligible for promotion on adhoc basis to the grade of Superintending Engineer (Civil) consequent upon opening of sealed cover or on receipt of decision of UPSC in the case of review DPC, as the case may be, the junior most Superintending Engineer (Civil) will be reverted to accommodate his senior. The relevant excerpt of the Office order read thus:-

“2. (i) to (v)

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(vi) The ad-hoc appointment will be further subject to the condition that as & when any senior Ex.Engineer (C) becomes eligible for promotion on ad hoc basis to the grade of SE (C) consequent upon opening of sealed cover 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.”

2. In the counter reply filed by respondent-1, the rule position regarding regular promotion to the post of Executive Engineer and Superintending Engineer has been set out and it is explained that on account of pendency of criminal case bearing no.1842/SIO(P)/Vig/CBI/2005 against him, the recommendation of the DPC held for promotion to the post of EE (C) in July/August, 2008 in respect of applicant was kept in sealed cover and further on his acquittal, the sealed cover was opened and he was granted regular promotion from 08.09.1998. The said respondent (NDMC) has also admitted

that in the seniority list of EE, the applicant was placed at serial No. 121-A, i.e. above Shri Ajay Kumar Mittal. There is no denial by them that juniors of the applicant are working as SE (Civil).

The relevant excerpt of the reply read thus:-

“Due to pendency of Police Case bearing No.1842/SIO(P)/Vig/CBI/2005, the name of the petitioner was kept in sealed cover on the basis of the assessment. Thereafter, consequent upon acquittal in said Police case, deleted from the records of Vigilance Department, North DMC, Sh. Sudhir Mehta S/o Shri R.K.Mehta, Asstt. Engineer (Civil) has been granted regular promotion to the post of Executive Engineer (Civil) in the pay scale of Rs.10,000-15200/- revised to Pay Band-3 Rs.15600-39,100/- + Rs. 6600/- (Grade Pay) w.e.f. 08.09.2008 (i.e. the date of issuance of actual promotion order issued vide No.F.8(8)/CED(III)/87/Pt.VI/2008/15/18191 dated 08.09.2008).

Further, consequent upon his regular promotion as EE(C), as per recommendation of the DPC, communicated vide UPSC's letter No. F.1/30(7)/2007-AP-1 dated 22.8.2008, the seniority of Sh. Sudhir Mehta has been fixed at Seniority No.12a-A i.e. below the name of Sh. Rajesh Khanna, Sty.No. 121 and above the name of Sh. Ajay Kumar Mittal, Sty.No.122 in the Revised Final Seniority List of Executive Engineer (Civil) bearing No.F.8(38)/CED(III)/2008/RK/14/GF/40 dated 03.05.2011, subject to Review DPC-2008 and further subject to revision of Final Seniority list of Executive Engineer (Civil). The same has been notified vide office order bearing No.F.8(8)/CED(III)/Pt.VI/2008/131/4138 dated 19.12.2014. As per existing notified RRs to the post of Superintending Engineer (Civil), 05 years regular service in the grade Executive Engineer (Civil) is eligible for promotion to the post of Superintending Engineer (Civil). There are 33 sanctioned post of Superintending Engineer (Civil). All the posts are filled up. On occurrence of the vacancy, the name of the officer would be considered for ad hoc promotion to the post of SE (C) alongwith their seniors who are in the pipeline of promotion before the next Departmental Screening Committee to assess the suitability of persons for filling up the post of Superintending Engineer (Civil).

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4. iii. That the contents of this para not denied being matter of record before the Ld. Tribunal. It is submitted that due to non availability of vacancy in the grade of Superintending Engineer (Civil), officer could not be granted ad hoc promotion in the grade. It is not denied that a number of junior are working as Superintending Engineer (Civil), the name of the petitioner would be considered by the Departmental Screening Committee on occurrence of vacancy in the grade. However Answering Respondent are making sincere efforts to comply with the directions issued by Hon'ble High Court in K.C.Meena case to conduct DPC of all the post of Engineering Cadre wherein the name of petitioner will be considered."

It is also the stand taken by the respondents that in implementation of the order passed by the Hon'ble Delhi High Court, they are in process of convening DPCs for regular promotion against the posts in Engineering cadre and the case of applicant would also be considered for such promotion.

3. We heard counsels for parties and perused the record. It is stare decisis that no one can claim ad-hoc promotion as a matter of right. Such appointment/promotion are made either in the absence of RRs or in a case where rules/seniority list are under revision. In G.I. Dept. of Per. & Trg. O.M.No.28036/8/87-Estt.(D) dated 30.03.1988, it has been emphasized that efforts should be made to fill up the post on regular basis and if in spite of the efforts some vacancies remain unfilled, wherever feasible the posts may be allowed to remain vacant until qualified candidates become available at the next

examination. Further the total period for which the appointment/promotion may be made on ad hoc basis is limited to one year only. The condition for making ad hoc promotion as mentioned in para 4 of the aforementioned general instructions dated 30.03.1988 (ibid) read thus:-

“4. Conditions for making ad hoc appointments.- In such exceptional circumstances, ad hoc appointments made be resorted to subject to the following conditions:-

- (i) The total period for which the appointment/promotion may be made on ad hoc basis, will be limited to one year only. The practice of giving a break periodically and appointing the same persons on ad hoc basis may not be permitted. In case there are compulsions for extending any ad hoc appointment/promotion beyond one year, the approval of the Department of Personnel and Training may be sought for at least two months in advance before the expiry of one year period. If the approval of the Department of Personnel and Training to the continuance of the ad hoc arrangements beyond one year is not received before the expiry of the one year period, the ad hoc appointment / promotion shall automatically cease on the expiry of the one year term.
- (ii) If the appointment proposed to be made on ad hoc basis involves the approval of the Appointments Committee of the Cabinet, this may be obtained prior to the appointment/promotion being actually made.
- (iii) Where ad hoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness basis even where promotion is by selection method as under-
 - (a) Ad hoc promotions may be made only after proper screening by the appointing authority of the records of the officer.
 - (b) Only those officers who fulfil the eligibility conditions prescribed in the Recruitment Rules should

be considered for ad hoc appointments. If, however, there are no eligible officers, necessary relaxation should be obtained from the competent authority in exceptional circumstances.

- (c) The claims of Scheduled Castes and Scheduled Tribes in ad hoc promotions shall be considered in accordance with the guidelines contained in the Departmental of Personnel and A.R. Office Memorandum No.36011/ 14/83-Estt. (SCT), dated 30-4-1983.
- (iv) Where ad hoc appointment by direct recruitment (which as explained above should be very rare) is being done as a last resort, it should be ensured that the persons appointed are those nominated by the Employment Exchanges concerned and they also fulfil the stipulations as to the educational qualifications/experience and the upper age-limit prescribed in the Recruitment Rules. Where the normal procedure for recruitment to a post is through the Employment Exchange only, there is no justification for resorting to ad hoc appointment.
- (v). Where the appointing authority is not the Ministry, the Authority competent to approve ad hoc appointments may be decided by the Administrative Ministries themselves. The competent authority so authorized by the authorized by the Ministry should be one level higher than the appointing authority prescribed for that post.”

In terms of the order passed by Hon’ble Delhi High Court in **K.C.Meena Vs. North DMC & Anr.** W.P (C)) 5356/2014, the respondents are under obligation to hold DPCs for regular promotion to the post of Superintending Engineer. The order read thus:-

“The respondents contend that the petitioner’s name was forwarded to UPSC in terms of order dated 27.08.2014 of this Court and that the corrected revised eligibility list for the year 1994 to 1996 is to be complied with.

Learned counsel for respondent No.1/North Delhi Municipal Corporation points out the non-compliance with the direction contained in order dated 27.08.2014. The explanation for not holding regular and periodic DPCs has been provided in the order dated 05.11.2014. The gist of the explanation is that since regular DPCs for the post of Executive Engineer (Civil), Superintending Engineer (Civil) and Chief Engineer (Civil) were not convened in UPSC, ad hoc promotions were resorted to or current duty charge promotions were made to or current duty charge promotions were made in terms of Notification dated 14.12.1973. The petitioner points out to a Division Bench direction dated 17.04.1998 in W.P. 4798/1995 in terms of which a circular was issued on 12.10.1998. The terms of the said circular which outlined the previous order of the Division Bench dated 17.04.1994 are clear enough. Ad-hoc or current duty charge promotions should be time specific and should not continue beyond one year.

Given such directions, the practice which appears to be prevent and widespread adopted in the Municipal Corporations to continue with such arrangement and even making further promotions on ad-hoc/current duty charge promotions basis would result in large scale destitution of its Officers. It would also create insecurity amongst incumbents who are in line for promotion and would have to wait for long. Accordingly, the following directions are issued:-

- (1) South Delhi Municipal Corporation, North Delhi Municipal Corporation and East Delhi Municipal Corporation shall ensure that the regular promotions for vacancy in respect of which DPCs and review DPCs have not been carried out in terms of the Rules and Court orders are in fact done in a time bound manner, not later than three months from today.
- (2) After compliance with the directions with respect to the Executive Engineer (Civil), the said process in respect of Superintending Engineer shall be complied within four weeks thereafter. In the circumstances, the respondent Corporations shall ensure that the relevant exercise to determine the eligibility/zone of consideration and short-listing of the concerned candidates for the purpose of promotion for each year is carried out.

- (3) After compliance with (1) and (2) above, the process shall be complied in respect of Chief Engineer (Civil) likewise in six months from today.
- (4) The relevant dossiers containing the names of all the eligible Officers who fulfil the criteria in terms of the prevailing rules and Circulars, and are eligible to be considered, shall be forwarded to the UPSC with all particulars in the case of each cadre of Executive Engineer (Civil), Superintendent Engineer (Civil) and likewise Chief Engineer to facilitate the process.
- (5) In case of any pending litigation, all litigations involving the process of selection, unless there are orders to the contrary, the concerned Corporation, as far as possible, proceed with the process of promotion and make it subject to the outcome of the said litigation.

It is clarified that this condition shall not be, in any manner, considered as a bar from proceeding in any matter on a Court from interpreting such direction as to mean that this has resulted in a stay or it prevents it from making an interim order.

List on 30.04.2016 for directions.
Dasti.”

In view of the aforementioned, the respondents may not be under obligation to fill up a post on ad hoc basis. Nevertheless they are under obligation to fill up the same on regular basis and further if any junior is given promotion to the post of Superintending Engineer (Civil) on ad hoc basis in the event of satisfaction of the conditions mentioned in para 2 in order dated 10.12.2012, he should be reverted and senior should be promoted.

4. In the wake, the OA is disposed of with direction to respondents to act in terms of the stand taken by them in para

4. iii of the OA and consider the applicant for his regular promotion within six weeks. If the applicant is not given regular promotion in the given time, the respondents would act in terms of the provisions contained in para 2 (vi) of Office Order dated 10.12.2012 (ibid), as expeditiously as possible preferably within four weeks from the date of expiry of the period of six weeks granted for his consideration for regular promotion. It is made clear that if no junior of the applicant is kept on promotional post on adhoc/look after/current duty charge basis, and a decision is taken to keep the promotional post as vacant, the applicant would also be not entitled to adhoc promotion. Nevertheless, as has been also emphasized by Hon'ble High Court, the respondents should fill up the vacancies on regular basis. No costs.

(K.N.Shrivastava)
Member (A)

(A.K.Bhardwaj)
Member (J)

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