

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1728/2015

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 Dinesh Yadav,
S/o Shri J.S.Yadav,
R/o 19-C, Vijay Mandal Enclave,
Mew Delhi-110016

... 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,
North 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 R.V.Sinha with Shri Amit Sinha and Shri D.K.Devesh, Suprabha K.Roshan)

O R D E R

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. 21.06.1990 and on his acquittal from a criminal case vide judgment dated 29.05.2014, he was declared regular incumbent of the post of Executive Engineer w.e.f. 8.09.2008. In the wake of his seniority in the grade of Executive Engineer was fixed at serial no. 112-o-A i.e. above Shri Rambir Singh Bansal and Shri Girish Chand (Seniority no. 112-A and 113). The grievance espoused by him in the present OA is that when 15 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 his OA in this regard read thus:-

“4(v). That grievance of the applicant is that approximately 15 junior officers are working as Superintending Engineer (Civil) who has been assigned charge of the Superintending Engineer between the periods 2007-2013. The Srty.No. of junior most officer who is working as Superintending Engineer (Civil) is 124-A and such orders in respect of the aforesaid 15 junior officers have been issued in different years i.e. 2007, 2008, 2009, 2010, 2012 & 2013. Further disadvantage to the applicant is, the higher pay scale i.e. PB-4,BP Rs.37400-57000/- and GP of Rs.8700/- has also been granted in favour of 3 junior officers, namely, Shri Girish Chand, Shri M.K.Singhla and Shri M.M.Dahiya. As mentioned above number of office orders have been issued and respondents have made one of the condition in the Office Order under which aforesaid junior officers have been promoted is that such promotion are subject to, 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 orders dated 10.12.2012 is annexed herewith and marked as Annexure No.4 and copy of order dated 9.12.2010 is annexed and marked as Annexure No.5.

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. All the orders as has been issued by the respondent between the periods 2007-2013 are in the knowledge of the respondents and all the orders are still continuing. 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 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 the Corporation, 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.1496/SIO(P)/Vig/CBI/2001 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. 112-O-A, i.e. above Rambir Singh Bansal and Sh.Girish Chand. 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.1496/SIO(P)/Vig/CBI/2001, against the petitioner as such his case was kept in Sealed cover on the basis of the assessment. Thereafter, consequent upon acquittal in Police Case No.1496/SIO(P)/Vig./CBI/2001 vide judgment dated 29th May, 2014 in the Court of Sh. Kanwal Jeet Arora, Special Judge, CBI (PC Act), Dwarka Courts, New Delhi his case was deleted from the records of Vigilance Department, South DMC vide their report dated 23.06.2014, the petitioner has been granted regular promotion to the post of Executive Engineer (Civil) in the pay scale of Rs.10000-15200/- revised to Pay Band-3 Rs.15,600-39,100/- + 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.Dinesh Yadav has been fixed at Seniority No.112-O-A i.e. below the name of Sh.Vinod Kumar Gupta, Sty No.112 and above the name of Sh.Rambir Singh Bansal, St.No.112-A & further above the name of Sh.Girish Chand, Sty.No.113 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. The same has been issued and notified vide office order bearing No.F.8(8) /CED/ Pt.VI/2008/2014/2555 dated 18.7.2014. 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 appointments/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 & Ors** (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 30.04.2011 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 consideration of applicant for his regular promotion. It is made clear that if no junior of the applicant is kept on promotional post on ad hoc/look after/current duty charge basis, and decision is taken to keep the post vacant, the respondents would be under no obligation to give ad hoc promotion to applicant also. Nevertheless, the respondents should fill up all the vacancies on regular basis. No costs.

(K.N.Shrivastava)
Member (A)

(A.K.Bhardwaj)
Member (J)

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