

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2907/2015

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 Suresh Chandra,
Superintending Engineer,
S/o Shri Mangal Sain,
R/o R-54-B, Dilshad Garden,
Delhi.

... Applicant

(By Advocate Shri Rajeev Sharma)

VERSUS

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

... Respondents

(By Advocate Shri R.N.Singh)

ORDER

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

The facts of the case captioned in the OA are that the applicant herein was appointed as Assistant Engineer (Civil) in MCD in the year 1989. Being degree holder, he became eligible

to be considered for promotion to the post of Executive Engineer in the year 2004 (sic 1994). He got promotion as Executive Engineer w.e.f 9.1.1997. In the seniority list of Executive Engineers issued on 8.05.2015, his position was at serial no. 14. In terms of the order No.F.7(10) /CED(II) /86/ Pt.V/35092-163 dated 29.12.2003, he was given current duty charge of the post of Superintending Engineer. Thereafter in terms of the Office Order No. F.7(10)/CEO/86/ Pt.VII /2013/ 2015/2630 dated 02.07.2015 he was given ad hoc promotion as Superintending Engineer w.e.f. 1.07.2014. In the present OA filed under Section 19 of Administrative Tribunals Act, 1985, the applicant has questioned the aforementioned order and has sought issuance of direction to respondents to give him all consequential benefits. The prayer made in para 8 and 9 of the OA read thus:-

Para 8

- “(a) to quash the impugned order dated 2.7.2015 as illegal and unconstitutional.
- (b) to issue direction to the respondents to give all the consequential benefits to the applicants.
- (c) The Hon’ble Tribunal may pass any other order/direction as deemed fit and proper in the circumstances of the present case and in the interest of justice.”

Para-9

The applicant is praying interim relief in two folds. The recovery of amount i.e. difference of salary between Executive and Supdtg. Engineer as ordered under the impugned order may be stayed.

The respondent may be restrained from issuing order of promotion/ assignment of charge on current/ad-hoc basis against the post of Chief Engineer (Civil) and further holding any Departmental Screening Committee for the post of Chief Engineer (Civil) till the disposal of present case.”

On 1.09.2015 when the matter was listed in the category of the cases ‘direction/after notice’, learned counsel for the applicant pressed for grant of interim relief, i.e. the respondents should be restrained from issuing order of promotion/assignment of charge on current/ad-hoc basis against the post of Chief Engineer (Civil). Mr. R.N.Singh, learned counsel for respondents opposed the interim prayer on the ground that the final relief sought in OA was only to quash the order dated 2.07.2015 whereby the applicant was given ad-hoc promotion as Superintending Engineer. He alluded that the respondents would have no difficulty if the OA itself is allowed and the order of ad-hoc promotion of the applicant is quashed. Mr. Rajeev Sharma, learned counsel for applicant conceded the stand taken by the learned counsel for respondents and espoused that the OA may be allowed.

2. We heard counsels for parties and perused the record. As can be seen from the prayer made in the OA, the ramification of the same is that ad-hoc promotion granted to applicant w.e.f. 1.07.2014 would be withdrawn. We are unable to appreciate

as to how an employee will question his own ad hoc promotion. To appreciate the controversy, we perused the pleadings of the parties. As can be seen from the contents of para 5 (a) of the OA, the case of the applicant is that he should be given promotion as Superintending Engineer (Civil) w.e.f 29.12.2003.

The para read thus:-

“5 (A) Because the applicant is entitled to be appointed as adhoc Supdtg. Engineer (Civil) w.e.f. 29.12.2003.”

It is stare decisis that promotion to a post become effective either from the date of DPC or assuming the charge of the promotional post whichever is later. The provision contained in para 17.10 and 17.11 of G.I. Dept. of Per. & Trg. O.M.No.16/7/90-Estt. (Pay-1) instructions dated 09.09.1992 in this regard read thus:-

“17.10 The general principle is that, promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion, whichever is later.

17.11. In case where the recommendations for promotion are made by the DPC presided over by a Member of the UPSC and such recommendations do not require to be approved by the Commission, the date of Commission's letter forwarding fair copies of the minutes duly signed by the Chairman of the DPC or the date of the actual promotion of the officer, whichever is later, should be reckoned as the date of regular promotion of the officer. In cases where the Commission's approval is also required, the date of UPSC's letter communicating its approval or the date of actual promotion of the officer, whichever is later, will be the relevant date. In all other cases, the date on which promotion will be effective will be the date on which the officer was actually promoted or the date of the meeting of the DPC, whichever is

later. Where the meeting of the DPC extends over more than one day the last date on which the DPC met shall be recorded as the date of meeting of the DPC.

Appointments to posts falling within the purview of ACC can, however, be treated as regular only from the date of approval of ACC or actual promotion, whichever is later, except in particular cases where the ACC approves appointments from some other date.”

Besides in **Baij Nath Sharma Vs. Hon’ble Rajasthan High Court at Jodhpur** (JT 1998 (5) SC 133), Hon’ble Supreme Court category ruled that there is no such law which provide for retrospective promotion and the only exception to the principle of prospective effect of promotion is the promotion of junior ahead of senior. Para 7 and 8 of the judgment read thus:-

“7. In Union of India v. K.K. Vadera this court with reference to the Defence Research and Development Service Rules, 1970, held that promotion would be effective from the date of the order and not from the date when promotional posts were created. Rule 8 of those Rules did not specify any date from which the promotion would be effective. This court said as under:

"5. There is no statutory provision that the promotion to the post of Scientist 'B' should take effect from July I of the year in which the promotion is granted. It may be that rightly or wrongly, for some reason or the other, the promotions were granted from July I, but we do not find any justifying reason for the direction given by the tribunal that the promotions of the respondents to the posts of Scientist 'B' should be with effect from the date of the creation of these promotional posts. We do not know of any law or any rule under which a promotion is to be effective from the date of creation of the promotional post. After a post falls vacant for any reason whatsoever, a promotion to that post should be from the date the promotion is granted and not from the date on which such post falls vacant. In the same way when additional posts are created, promotions to those posts can be granted only after the Assessment Board has met

and made its recommendations for promotions being granted. If on the contrary, promotions are directed to become effective from the date of the creation of additional posts, then it would have the effect of giving promotions even before the Assessment Board has met and assessed the suitability of the candidates for promotion. In the circumstances, it is difficult to sustain the judgment of the tribunal."

8. It is regrettable because of the inaction on the part of the High court that recruitment from the Bar could not be made in time which created an imbalance in the service and ultimately it were the appellant and officers similarly placed who suffered. After having put in long years of service, it is the seniority and promotion which an officer looks forward to. He expects he is given due promotion in time. Non-promotion may be an incidence of any service. But here the appellant has been deprived of his promotion without any fault of his. The High court said that it might be a sad state of affairs that the name of the appellant was not considered for promotion till he retired. The High court may feel anguished but it gives no comfort to the appellant. At least for the future, such an unfortunate thing should not happen to any other officer similarly situated. This malaise which abysmally afflicts any service when there is recruitment from different sources crops up in one form or the other with great disadvantage to one or the other. But then the service is not constituted merely for the benefit of the officers in the service but with a certain purpose in view and in the present case, for dispensing justice to the public at large. It is not at all advisable to keep any post in the judiciary vacant for days when the courts are burdened with arrears and the litigants are the ones who suffer. We expect the High courts to be vigilant and to fill up the posts in the direct quota in time and if the Bar quota cannot be filled for any reason for no fault of the promotee officers, their case for promotion should not be kept pending till some of them even superannuate. When the process for recruitment from the Bar begins and it is expected that posts for the direct quota will be filled up soon, during the intervening period, the officers in the subordinate service can be given ad hoc. promotions without their right to claim seniority over direct recruits, who may join later. Functioning of the courts must not stop."

Such view was also taken by Hon'ble Supreme Court in **State of Uttaranchal and Another Vs. Dinesh Kumar Sharma**

(2007) 1 SCC 683) The relevant excerpt of the judgment read thus:-

“28. It is clear from the above that a person appointed on promotion shall not get seniority of any earlier year but shall get the seniority of the year in which his/her appointment is made. Therefore, in the present fact situation the respondent cannot claim promotion from the date of occurrence of the vacancy which is 1995-96 but can only get promotion and seniority from the time he has been substantively appointed i.e. from 1999. Likewise, the seniority also will be counted against the promotion/appointment in the cadre from the date of issuance of order of substantive appointment in the said cadre, i.e. from 19.11.1999.”

Once there is no provision for regular promotion with retrospective effect, the question of ad-hoc promotion from retrospective date does not arise. In G.I. Dept. of Per. & Trg. O.M.No.28036/8/87-Estt.(D) dated 30.03.1988 it has been provided that wherever feasible the posts may be allowed to remain vacant until qualified candidates become available for being considered for appointment at the next examination. The relevant extract of the OM read thus:-

“

- (a) Wherever feasible, the posts may be allowed to remain vacant until qualified candidates become available at the next examination....”

Further in G.I.Dept. of Per. & Trg. O.M.No.28036/01/2007-Estt. (D) dated 14.11.2007, it has been specifically provided that

the service rendered on ad-hoc basis in the grade concerned would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade. The relevant excerpt of the instructions read thus:-

“2. Attention is also invited to the DoP&T’s OM No. 28036’1’2001-Estt.(D) dated 23-7-2001, which prescribes that whenever an appointment is made on ad hoc basis, the fact that the appointment is ad hoc and that such an appointment will not bestow on the person a claim for regular appointment should be clearly spelt out in the orders of appointment. It should also be made clear that the service rendered on ad hoc basis in the grade concerned would not count for the purpose of seniority in that grade and for eligibility for promotion to the next higher grade.

3. This order takes effect from the date of its issue.”

In the wake, we are unable to appreciate as to how the applicant who is not even a regular Superintending Engineer can seek stay of promotion to the next higher post of Chief Engineer (Civil).

3. In view of the stand taken by the parties, we could have allowed the OA and quash the impugned order. Nevertheless, we are not sure that such would be semblance of the applicant in the matter. In terms of Section 20 of Administrative Tribunals Act, 1985, before approaching the Tribunal, an individual may exhaust all the departmental remedies available to him. In the wake, the Original Application is

disposed of with liberty to applicant to make a detailed representation to respondents within two weeks from the date of receipt of a copy of this order and a direction to respondents to take a decision in the same within four weeks thereafter.

(K.N.Shrivastava)
Member (A)

(A.K.Bhardwaj)
Member (J)

‘sk’