

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 3726/2014

Reserved on: 29.09.2015
Pronounced on: 12.10.2015.

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Neelam Arora
w/o Sh. Rajendra Kumar Lala,
Senior Architect,
North Delhi Municipal Corporation,
2509, Sector 49, Sainik Colony,
Faridabad, Haryana-121001. ...Applicant

(Applicant in person)

Versus

1. North Delhi Municipal Corporation
Through its Commissioner,
4th Floor, Dr. SPM Civic Centre,
Minto Road,
New Delhi – 110 002.
2. Director of Local Bodies,
Urban Development Department,
Govt. of NCT of Delhi,
Delhi Sachivalaya, IP Estate,
New Delhi-110 002. ...Respondent

(By Advocate: Shri R.N. Singh for R-1 and
Ms. Rashmi Chopra for R-2)

O R D E R

By Dr. B.K. Sinha, Member (A):

The dispute involved in the instant Original Application relates to handing over current duty charge. The applicant has assailed non-compliance of MCD Circular dated 14.12.1973 regulating the holding of current duty charge on

higher post which is to be read in consonance with DOP&T OM meant for timely conduct of DPC to fill up the vacant posts.

2. The applicant has prayed for the following relief(s):-

- i) *That the Hon'ble Tribunal may graciously be pleased to issue order/directions to the respondent nos.1 and 2, to follow the Architects Act 1972 which permits only a registered architect to represent as an Architect to practice the profession and for use of designation, thereby removing the Chief Engineers from the post of Chief Architect, thus vacating the posts for eligible qualified Architects;*
- ii) *That the Hon'ble Tribunal may graciously be pleased to issue order/directions to the respondent nos. 1 and 2 to fill up the vacant posts of Chief Architect on current duty charge as per the principles laid down in circular dated 14/12/73 and under DOPT OM which direct for holding timely DPC;*
- iii) *That the Hon'ble Tribunal may graciously be pleased to pass any other or further appropriate orders against respondent no.1 and 2 for protection of applicant's right to work as 'Chief Architect'.*

3. The facts of the case, in brief, are that the applicant is a qualified Architect and has been appointed as Senior Architect on 13.07.2010 on regular basis after having been selected through the Union Public Service Commission. It is the submission of the applicant that the post of Chief Architect is lying vacant and she has been looking after the technical functioning of the said post. As per the recruitment rules, the post of Chief Architect is to be filled up by promotion failing which by direct recruitment. It is further submitted that as per Circular of the respondent

organization dated 14.12.1973, which delineates conditionalities for allowing current duty charge, prescribes that an employee in order to become eligible for current duty charge must have served for 2/3rd period of the service in the feeder cadre. There are 3 posts of Chief Architect in the cadre of MCD i.e. one for each of the Corporations and, it is the case of the applicant, the same has been lying vacant consequent to trifurcation of the erstwhile MCD w.e.f. 18.04.2012. It is the grievance of the applicant that instead of taking steps for filling up the post of Chief Architect through the legitimate process of recruitment as per the recruitment rules, the respondents have allowed these posts to be left vacant for the last more than two years having given administrative control of these vacant posts to three Chief Engineers (Civil) which is impermissible as being out of the cadre. The last incumbent of the post had submitted his technical resignation his appointment as Professor of Architecture in School of Planning and Architecture, Vijaywada (Andhra Pradesh). The applicant further submits that as per the final seniority list of Senior Architects issued by the respondents on 22.02.2011 (Annexure A-7), the applicant figures at serial no.2 while the official at serial no.1 has already resigned from MCD thereby making applicant the senior-most. The applicant further submits that by placing the charge of three Corporations, the

respondents have violated the OM of DOP&T and also Sections 2(a), 3, 36 & 37 of the Architects Act, 1972 which permits only a registered Architect to represent as Architect and use the title and style of Architect for practising the profession of an Architect in India. While the respondents have handed over the charge of the post of Chief Law Officer in North DMC to the senior most officer of the rank of Law Officer in the Law Department without even having been promoted him, and have further given him the administrative control to discharge the function of Town Planning Department. They have given the responsibility of the post of Chief Architect to Civil Engineers overlooking the claim of the Senior Architects including that of the applicant.

4. The applicant, in support of his claim, has relied upon the following decisions of the Principal Bench of this Tribunal:-

- (i) ***Sunil Kumar Mehera V/s. MCD & Ors.*** [OA No.2276/2012 decided on 08.03.2013]; and
- (ii) ***Naveen Verma V/s. MCD & Ors.*** [OA No.392/2012 decided on 15.05.2012].

5. Separate counter affidavits have been filed by the two respondents. The respondent no.1, who is the principal respondent, has submitted that there was one post of Chief Architect in the erstwhile MCD while three posts have been

created consequent to the trifurcation in the scale of Rs.37400-67000 (PB-4 + GP Rs.10,000/-). The principal defence adopted by the respondent no.1 is that the current charge appointment is not a promotion but purely a stop gap arrangement arising in the exigencies of work as felt necessary by the competent authority. The very language of the Circular dated 14.12.1973 indicates that it does not confer any right on the applicant for giving current duty charge. While replying to para 4.5 of the OA, the respondent no.1 submits that consequent to the appointment of Dr. S. Ramesh, the then Chief Architect as Professor of Architecture in School of Planning and Architecture, Vijaywada, none of the persons including the applicant are eligible to hold the post of Chief Architect. The respondent no.1 further submits that the applicant, who is in the Grade Pay of Rs.7600/- has not rendered the required seven years of regular as stipulated in the recruitment rules and, therefore, could not be considered for promotion as Chief Architect. Hence, the work of Architectural Department has been assigned to the Chief Engineer (Building) as a stop gap arrangement.

6. The respondent no.2 has questioned the maintainability of the resent OA vis-a-vis the respondent no.2. The respondent no.2 further referred to Section 484-A

of the MCD (Amendment) Act, 2011 vide which the Director of Local Bodies is neither the appointing authority nor the promoting authority and on this ground alone the respondent no.2 had sought to disassociate itself from the instant litigation.

7. The applicant has filed a rejoinder application and in para 5 whereof it has been submitted that she is not seeking regular promotion but is only asking that the vacant post of Chief Architect be filled up on current duty charge basis as per the principles laid down in Circular dated 14.12.1973. The applicant has also alleged the respondent no.1 of having reneged from its own affidavit tendered before the Hon'ble High Court of Delhi in WP(C) No. 3037/2012 (Annexure A-12) that they would follow the orders of the Hon'ble Court strictly in letter and spirit.

8. We have patiently heard the applicant, who appears in person, and the learned counsels for the respondents. We have also carefully gone through the pleadings on record. We find that the oral submissions of the parties, by and large, followed the pleadings.

9. Learned counsel for the respondent no.1 was vehement in his assertion that the practice of current duty charge is purely governed by convenience and that a Chief Engineer is

senior to the applicant, who is Senior Architect, and is, therefore, in a better position in the discretion of the respondents to discharge the duty on a stop gap basis.

10. The only issue to be considered here is that whether any of the rights of the applicant have been violated in the impugned action of the respondents in handing over the current duty charge of the post of Chief Architect to the Chief Engineer (Civil) in the respondent organization?

11. We find that certain facts are admitted: the applicant is a qualified Architect who has been promoted to the post of Senior Architect on selection basis as per the recommendations of the UPSC; the post of Chief Architect has been lying vacant since 18.04.2012; The Chief Engineer (Civil) has been holding the charge of the post of Chief Architect in addition to his own duties on current charged basis. We also find that the applicant has annexed the reply dated 09.07.2013 received from the Council of Architecture in response to a query under the Right to Information Act, 2005 which indicates that only a qualified and registered Architect can represent as an Architect and use the title and style of an Architect for practising the provision of an Architect in India. For the sake of clarity, we reproduce the contents of reply dated 09.07.2013:-

“This refers to your letter dated 22.06.2013, seeking information under the RTI Act, 2005. In this regard, the information sought by you is furnished point-wise below:-

A to 1. These are not a request for information as defined under 2(f) of the Architects Act, 1972 but are queries. You are advised to refer to Sections 2(A), 35, 36 & 37 of the Architects Act, 1972, which permit only a registered architect to represent as an architect and use the tile and style of architect for the practising the profession of an architect in India and also provide for preference to architects in organizations funded by the Central/State Government and also provide for penalty for violation of these provisions by the first class magistrate as per Section 39.

Further, professional misconduct is applicable only in respect of registered Architects and not against non-architects i.e. Engineers, Draftsman, etc.

The Act and relevant documents are available at Council’s website www.coa.gov.in. However, to facilitate you a Handbook of Professional Documents is enclosed herewith.”

12. Here, on this point we also need to examine the question that who is an Architect. The Architects Act, 1972 (hereinafter referred to as the Act) under Section 2(a) defines the term ‘Architect’ means a person whose name is for the time being entered in the register. Section 35 has further strengthened this position and provides as under:-

“35. Effect of registration.

(1) Any reference in any law for the time being in force to an architect shall be deemed to be a reference to an architect registered under this Act.

(2) After the expiry of two years from the date appointed under sub-section (2) of section 24, a person who is registered in the register shall get preference for appointment as an architect under the Central or State Government or in any other local body or institution which is supported or aided from the public or local funds or in any institution recognised by the Central or State Government.”

Section 36 provides for penalty upon a person who is not registered but falsely represent that he is so registered, while Section 37 provides for prohibition against use of title. For the sake of greater clarity, Section 37 is being extracted hereunder:-

“37. Prohibition against use of title.

(1) After the expiry of one year from the date appointed under sub-section (2) of section 24, no person other than a registered architect, or a firm of architects shall use the title and style of architect:

Provided that the provisions of this section shall not apply to-

(a) Practice of the profession of an architect by a person designated as a "landscape architect" or "naval architect";

(b) A person who, carrying on the profession of an architect in any country outside India, undertakes the function as a consultant or designer in India for a specific project with the prior permission of the Central Government.

(i) "Landscape architect" means a person who deals with the design of open spaces relating to plants trees and landscape;

(ii) "Naval architect" means an architect who deals with design and construction of ships.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable on first conviction with fine which may extend to five hundred rupees and on any subsequent conviction with imprisonment which may extend to six months or with fine not exceeding one thousand rupees or with both.”

The deduction, which can be made from this, is that it is only a qualified registered Architect who is competent to represent himself as an Architect. It goes without saying that the office in contestation is that Chief Architect, which implies a person who is a qualified registered Architect and

heads the Architectural Department of the respondent organization, which includes a number of hard core functions related to the architecture. A person, who is not a qualified and registered Architect, cannot discharge these hard core architectural functions. The two categories, which have been excluded from the ambit of this Act, are the Landscape or the Naval Architects and the persons who are carrying on the profession of architect outside India and undertake specified projects in India. It leads to the invariable conclusion that the Architectural Department of the respondent organization will discharge only architectural functions and will not indulge in functions like roads or latrines or selling different utilities. The Chief Architect of the organization, in our view, has to be a qualified and registered Architect in order to provide guidance to the department and to undertake different architectural functions.

13. We also take up the instructions of the Department as contained in Circular dated 14.12.1973, the contents of which are being extracted hereunder for the sake of better clarity:-

“It has been observed that the different departments have been following different norms while recommending order for current charge appointment to higher posts. In order to streamline the procedure relating to such appointments, the following principles are laid down for strict compliance by all concerned:-

- i) *Current charge arrangements should be made only in the order of seniority subject to the condition that the official/officer being otherwise fit with reference to service character rolls and clearance reports from the DOV/DOI.*
- ii) *Current charge arrangements should not be made of and otherwise suitable person senior to the incumbent is available except where the current charge arrangement is for such a short period that it will not be in the administrative interest to disrupt the eligible person from his existing assignment.*
- iii) *Current charge arrangements should cease forthwith when an official/officer being eligible for ad hoc/regular appointment to the post. Cases for ad hoc/regular appointment are to be initiated simultaneously while making current charge arrangements.*
- iv) *At the time of assessing the official/officer for appointment in current charge basis, single warning or adverse remarks in his CRs for the last three years should not be the only guiding factor for determination of his suitability, but the CRs for the last three to five years should form the basis of assessment.*
- v) *Only cases of such official/officer for appointment on current charge basis should be considered who have rendered 2/3rd of the service prescribed who have for purpose of regular appointment. In cases, where RRs have been notified for posts, the same would be followed. In case, there is difference in the recruitment regulations as approved by the Commissioner; and those approved by the Standing Committee/Ad-hoc Committee/ Corporation specific orders of the Commissioner should invariably be obtained as to the criteria to be in filling up the post.”*

The above Circular well indicates that handing over of current duty charge is not an arbitrary exercise. It has to be governed by the rules of seniority. Here, we would pause to say that rules of seniority do not indicate seniority outside the cadre. What we have concluded in the previous paragraphs well establishes that a Chief Sanitary Inspector

or a Director in any Department may be a Joint Commissioner or Additional Commissioner may be senior in pay scales but he does not govern the seniority implied in this OM. The seniority here would relate only to the seniority within the cadre. The second point that attracts our attention is that the current duty charge is a stop gap arrangement. It is agreed that there is no definition anywhere as to the period which would imply the current charge arrangement. However, the arrangement on current charge to the Chief Engineer (Civil) has dragged on for more than two years now. To our mind, a current duty charge would imply a few days or few months but certainly not for few years or years. The Circular further goes ahead to prescribe that the current duty charge should cease as soon as a person becomes eligible and that the CRs of the applicant should be considered for current duty charge. We do not find anything in the counter affidavit submitted by either of the two respondents which may indicate that any such exercise has been done. Moreover, the eligibility period of current duty charge has been relaxed to $2/3^{\text{rd}}$ of the service period prescribed i.e. $2/3^{\text{rd}}$ of seven years which comes to 2 years and 4 months. On the other hand, the applicant has been a Senior Architect for more than four years and, therefore, she is well qualified to hold the current duty charge of the post of Chief Architect.

14. We also find that this issue has received consideration in a number of previous decisions of the Tribunal. In **Naveen Verma V/s. MCD & Ors.** (supra), the issue was precisely related to the action of the respondents in promoting ineligible persons to the post of Chief Engineer (Civil) on current duty charge by ignoring rules and procedures. The ground adopted herein by the respondents, who were respondent no.1 in its previous Avtar of MCD, had adopted the same ground of administrative suitability for handing over the current duty charge and the same was totally rejected by the Tribunal and directed the matter to Screening Committee. For the sake of greater clarity, relevant portion is being extracted hereunder:-

“13. Respondents have tried to state that respondent no.4 has been looking after the work of the post of SE on current duty basis since 2004 and, therefore, has the necessary experience. They have also taken the stand that in earlier precedents, persons not having required length of service have been given current duty charge by the MCD. However, we are not convinced by this argument. In clause 5 of the circular of MCD dated 14.12.1973, the words should be considered have been used. The fact that this provision has not been adhered to by MCD earlier would not justify the present position, which is certainly not in accordance with rules. They could have gone by the seniority, if there were no guidelines but once guidelines were issued, they ought to have been followed. This fact has been adequately highlighted by the Screening Committee in its meeting held on 23.01.2012, which has been quoted earlier. In fact, the suitability of respondent no. 4 has not even been assessed by the Committee as he was not eligible. When the circulars and instructions regarding assigning current duty charge are in existence in MCD, there is no reason why they should not be adhered to. We have

also noted that respondent no.4, who was holding current duty charge of SE since 2004, was not found suitable for ad hoc promotion as SE in 2006. It is only when punishment had been imposed upon him in 2009 that he could get ad hoc promotion in 2009. Thus the question is when a person was not found suitable for grant of even ad hoc promotion can the same period be taken into consideration for holding next rank even if on current duty charge. Moreover if current duty charge could be given only on the basis of seniority, there was no need to constitute Screening Committee. The purpose of constituting Screening Committee is to assess the suitability of persons for next post and for this purpose sufficient names should be placed before the Selection Committee.

14. On the basis of above observations, we are of the view that impugned orders dated 1.02.2012 with regard to respondent no. 4 are not in accordance with the circular dated 14.12.1973. However, we notice that in the impugned orders, the arrangement for current duty charge has been made up to 16.05.2012 or till the posts are filled on regular basis. We, therefore, do not wish to disturb the arrangement made till 16.05.2012. We direct the respondents to refer the matter to the Screening Committee with sufficient number of S.E. so that their suitability may be assessed and after that fresh orders should be passed in accordance with the provisions of circular dated 14.12.1973 in letter and spirit to be operative from 17.05.2012. This exercise should be completed within one week to avoid any further litigation. The OA is accordingly disposed of with directions mentioned above.”

15. We also take note of the fact that in a recent case titled as **Sunil Kumar Mehera V/s. MCD & Ors.** [OA No.2839/2012 and other connected OAs decided by the Principal Bench of this Tribunal by a common order dated 26.08.2013] the parties were the same. In these cases, the applicant- an Additional Town Planner had questioned the order dated 05.05.2011 appointing one Shamsher Singh,

Senior Town Planner-respondent no.3, looking after the administrative control and day-to-day routine charge of the Department. The applicant therein namely Sunil Kumar Mehra had sought convening of a Screening Committee. This Bench of the Tribunal relying upon the decision of the Hon'ble High Court of Delhi in ***Municipal Corporation of Delhi V/s. Anil Prakash*** [2008 II AD (Delhi) 99] and of the Tribunal in ***Naveen Verma V/s. Union of India*** (supra), held as under:-

“15. As has been noticed by the Hon'ble Delhi High Court in Municipal Corporation of Delhi Vs. Anil Prakash, 2008 II AD (DELHI) 99, according to MCD itself, the look after charge or current duty charge or charge on ad hoc basis can be revoked at any time. Such proposition was not accepted by the Hon'ble High Court and it could be viewed that in all such cases where look after arrangement is terminated, reasons must be placed on the file. It could be further viewed that the stop gap arrangement/ current duty charge are methods devised by the respondents to make their own arrangements and to find out way and means to not adhere to the procedure introduced by themselves. For easy reference, para 21 to 23 of the judgment of the Hon'ble Delhi High Court are extracted hereinbelow:

“21. Here, we may also usefully refer to the judgment of the Supreme Court in the case of O.P. Singla and Another Vs. Union of India and Othes, (1984) 4 SCC 450. Though that case related to the seniority of the Judicial officers of Delhi Higher Judicial Service, the question which fell for consideration was as to whether for the purpose of reckoning the seniority `promotions given to such officers on ad hoc basis or stop-gap arrangement would count for seniority or not. The Court was of the opinion that such a service has to be counted for the purpose of seniority and the seniority should be fixed on the basis of continuous length of service as quota-rota system had broken down. For us, it is important to note the basis for arriving at the decision that service on ad hoc basis/as stop-gap arrangement is to be counted. This was explained in the following manner:-

“27. Thus, persons belonging to the Delhi Judicial Service who are appointed to temporary posts of Additional District and Sessions Judges on an ad hoc basis or for fortuitous reasons or by way of a stop-gap arrangement, constitute a class which is separate and distinct from those who are appointed to posts in the Service in strict conformity with the rules of recruitment. In view of this, the former class of promotees cannot be included in the list of seniority of officers belonging to the Service.

28. It is however difficult to appreciate how, in the matter of seniority, any distinction can be made between direct recruits who are appointed to substantive vacancies in the Service on the recommendation of the High Court under Rule 5 (2) and the promotees who are appointed in consultation with the High Court to posts in the Service under Rules 16 and 17. Rule 16 provides for the appointment of promotees to temporary posts in the Service, while Rule 17 provides for appointment of promotees to substantive vacancies in the Service on a temporary basis. Promotees who are appointed to the Service under either of these two rules must be considered as belonging to the same class as direct recruits appointed under Rule 5 (2). They perform similar functions, discharge identical duties and bear the same responsibilities as direct recruits. They are appointed on a regular basis to posts in the Service in the same manner as direct recruits are appointed, the only distinction being that whereas the latter are appointed on the recommendation of the High Court, promotees are appointed in consultation with the High Court. Therefore, no distinction can be made between direct recruits on one hand and promotees appointed to the Service on the other, in the matter of their placement in the seniority list. Exclusion from the seniority list of those promotees who are appointed to posts in the Service whether such appointment is to temporary posts or to substantive vacancies in a temporary capacity, will amount to a violation of the equality rule since, thereby, persons who are situated similarly shall have been treated dissimilarly in a matter which constitutes an important facet of their career.”

22. Mukharji, J, who rendered dissenting opinion concurred on this aspect with the majority view in his following observations:

“85. It may be appropriate here to note on the question whether the petitioners were appointed regularly that all the promotees were appointed to temporary posts in accordance with the qualifications laid down under Rule 7 (a), namely, by selection and after completion of a minimum of ten years Judicial service. The selections were made by the Full Court of the High Court and appointments were made on merit-cum-seniority basis so much so that persons found not fit for promotions were ignored as in the case of Shri C. D. Vashist and Shri S. P. Singh Chowdhary.

23. As already noted above, in the present case proper Selection Committee considered the case of appointment of the petitioner to the post of Director-in-Chief (Sanitation) after following the rules and the respondent being the senior most person was commended for the appointment. Merely because the appellant had adopted the practice of giving appointment on ‘look after charge’ basis, would not mean that the appellant is permitted to exploit such situation, which is its own creation by first denying the legitimate due to the officials, denying them promotion on substantive basis and continue to follow the practice of ‘look after charge’ and then coming up with the plea that such a person has no right to the said post. This cannot be countenanced and has to be deprecated.”

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17. We are in respectful agreement with the view taken by the Tribunal in the aforementioned case. In the circumstances, OA 2839/2012 is disposed of with a direction to the respondents to finalize the process of screening of the Senior Town Planners for their promotion as Chief Town Planner on Current Duty Charge Basis against 3 posts in trifurcated Corporation in accordance with the Circular No.3/2/72/CED(A)/167 dated 14.12.1973 within a period of three months from the date of receipt of a copy of this order. No order as to costs.”

16. In conclusion, we find that the applicant is a qualified and registered Architect; she is the senior-most; she is qualified enough to hold temporary charge of the post of Chief Architect as per Circular dated 14.12.1973; the

Circular and various pronouncements of different courts make out that handing over the current duty charge is not an arbitrary act to be practised as a measure of distributing largesse, but rather has to follow the principles enunciated. We further find that the charge in question is that of the post of Chief Architect of the Department of Architecture. Even day-to-day functioning involves many architectural functions which have to be undertaken as per the provisions of the Architects Act, 1972. We further find and hold that the respondents are not following their own Circulars. We have also taken note of the undertaking given by the respondent no.1 on 25.09.2012 before the Hon'ble High Court of Delhi in ***Pradeep Bansal V/s MCD & Ors.*** [WP(C) No. 3037/2012], which reads thus:-

“Ms. Maninder Acharya has taken instructions as to whether the current duty assignments in future shall be undertaken strictly as per the Circular dated 14.12.1973. She states that that would be so. She shall be filing an affidavit in the course of the day. A copy of the same is handed over to Mr. Sandeep Sethi, the learned Senior Counsel appearing on behalf of the petitioner.”

17. We find that this solemn affidavit sworn before the Hon'ble High Court of Delhi is getting disregarded by the respondents. Hence, we have no option except to allow the instant Application with the following directives:-

- (i) The respondent no.1 is directed to hold a meeting of the Screening Committee to consider the applicant for filling up the vacancy of Chief Architect on current duty charge following the principles enunciated in Circular dated 14.12.1973 and the provisions of the Architect Act, 1972 as also the relevant DOP&T OM on the subject;
- (ii) The above direction must be carried out within a period of two months from the date of receipt of a certified copy of this order;
- (iii) There shall be no order as to costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

/AhujA/