

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.3159/2016

This the 7th day of March, 2017

Hon'ble Shri Justice Permod Kohli, Chairman
Hon'ble Shri K N Shrivastava, Member(A)

Shri Brij Mohan Verma
Executive Engineer, Age 59, Group 'A'
Late Shri Om Prakash Verma
R/o DDA-SFS, Flat No.50
Punjabi Bagh Apartments
Rohtak Road
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, 5th Floor
J.L. Marg, New Delhi. ... Respondents

(Through Advocate: Shri R.N. Singh)

Order (Oral)**Justice Permod Kohli, Chairman:**

The applicant joined the service with the erstwhile MCD as Assistant Engineer(Civil) on 07.11.1989. He earned promotion up to Executive Engineer(Civil) vide order dated 09.01.1997 on the recommendation of DPC. Appointment to the next post of Superintending Engineer is also by promotion from the feeding channel of Executive Engineer. It is alleged that DPC has not been convened since 1997 and one of the officer filed Writ Petition(C) No.5356/2014 before the Hon'ble Delhi High Court wherein some directions were issued on 19.12.2014. Consequent upon the said directions, the respondents passed office order dated 29.12.2015(Annexure-2) granting promotions to the post of Superintending Engineer (Civil) on regular basis. Name of the applicant figures at Sl. No.9 with seniority of Executive Engineer at 73. The applicant is a SC candidate. On regular promotions being made to the post of Superintending Engineer, the respondents issued the final seniority list dated 23.02.2016 as circulated vide Office Order dated 29.12.2015 (Annexure-2). Name of the applicant figures at Sl. No.9 in the aforesaid seniority list with seniority No.28. The respondents have now passed the order dated

25.04.2016 whereby ad hoc promotions have been granted for the post of Chief Engineer (Civil) from the feeding channel of Superintending Engineer. This order includes the promotees from Seniority No.29 up to 46. The applicant who stands at seniority No.28 in the seniority list of Superintending Engineers has been excluded. It is under these circumstances that the present OA has been filed by the applicant seeking the following reliefs:-

“(a) to issue direction to the respondents to promote applicant as Chief Engineer (Civil) on ad hoc basis.

(b) to issue direction to the respondents to implement condition vii of the office order dated 25.04.2016.

(c) to issue direction to the respondent to issue promotion order of the applicant as Chief Engineer(Civil).”

2. The respondents in their counter affidavit have given the profile of the applicant stating therein that he was promoted as regular Executive Engineer(C) w.e.f. 09.01.1997 and was placed at seniority No.77 in the seniority list of Executive Engineer(C) issued vide circular dated 02.06.2010. They have also mentioned that he has earned some penalty orders. The first penalty order was dated 16.07.2004 whereby he was awarded reduction in the pay in the pay scale by two stages for a period of two years

with cumulative effect. The second penalty was imposed upon him on 06.12.2006. Again reduction in the pay in the then pay scale by four stages for a period of four years with cumulative effect and an FIR No.243 was registered on 19.03.2007. However, later on, his name was deleted from the said FIR on 04.02.2010. Another departmental inquiry was initiated on 03.02.2010 in which the applicant was exonerated on 13.10.2014. From perusal of the various penalty orders, referred to in this para, we find that the impact of the penalties was over by the end of December, 2010 and thus none of these penalties or even the registration of FIR wherein his name was later deleted could come in the way of promotion of the applicant. In any case, the applicant was regularly promoted as Superintending Engineer w.e.f. 17.12.2015, vide order dated 29.12.2015 and his name was shown at Sl. No. 9 of the promotion order.

3. It is also not in dispute that consequent upon promotion the applicant's name has been incorporated in the final seniority list of Superintending Engineers at Seniority No.28. The respondents have further mentioned that after the Superintending Engineer(C) the next higher post is Chief Engineer(C) and as per the notified Recruitment Rules, for

promotion to the post of Chief Engineer(C), seven years service in the grade of Superintending Engineer is required. It is stated that the applicant was not possessing 7 years residency service as Superintending Engineer either on ad hoc or on regular basis and thus was not eligible for promotion to the post of Chief Engineer.

4. We have heard learned counsel for the parties.

5. In para No.4-vii, the applicant has alleged that the respondents are deliberately not holding the regular annual DPC for various posts and for that purpose reference is made to order dated 19.12.2014 passed by the Hon'ble Delhi High Court. It is this order which is the basis for granting regular promotion to the post of Superintending Engineer vide Annexure-2 order dated 29.12.2015 wherein the applicant has also been placed at Sl. No.9. The applicant has also made reference to circular dated 20.07.1998 issued by the respondents. The said circular contains various conditions for making ad hoc promotion and it is reproduced herein:-

"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 appointment/promotions at least four months prior to anticipated vacancies.

viii) Intimation shall be given to UPSC of all such appointments/promotions."

6. From the counter affidavit, we find that the averments made in para 4-vii have been admitted by the respondents. The applicant has also placed on record a copy of status report filed by the respondent-North Delhi Municipal Corporation dated 28.04.2016 in CCP No.718/2015 in WP(C) No.5356/2015. In the said status report, the NDMC gave following undertaking before the Hon'ble Delhi High Court:-

"(c) Since no officer is eligible for the Regular post of Chief Engineer, ad-hoc promotion is granted to the senior most Supdt Engineers as per the vacancy position."

Based upon the aforesaid undertaking, it is contended on behalf of the applicant that the respondents were bound to make ad-hoc promotions to the post of Chief Engineer on the basis of seniority. However, while making promotions vide the impugned order dated 25.04.2016 rule of seniority

has been totally ignored and the applicant has been denied promotion despite his seniority.

7. Shri R.N. Singh, learned counsel appearing for the respondents has attempted to persuade the court that since the applicant was not having minimum residency period either on ad hoc or on regular basis as Superintending Engineer, he was not recommended by the Screening Committee. This position is totally unacceptable.

8. Admittedly, the applicant is senior most Superintending Engineer(C) having earned promotion in the grade of Superintending Engineer on regular basis. The promotions are made on ad hoc basis to the post of Chief Engineer in view of the undertaking given before the Hon'ble Delhi High Court and otherwise also the law is settled that even for promotions on ad hoc basis the seniority has to be maintained unless somebody is disqualified or there is any other legal impediment. In the present case, there is absolutely no legal impediment. At least no such legal impediment has been brought on record by the respondents in their counter affidavit. The penalties referred to in the counter affidavit have lived their life up to December, 2010. The residency period is seven years. The other promotees are also not having residency period in accordance with the

recruitment rules that is why the ad hoc promotions have been made.

9. Under such circumstances, the claim of the applicant could not have been denied on the ground that he is not having the minimum residency period. When admittedly, the applicant is senior and his seniority has been maintained in the seniority list circulated as late as on 23.02.2016, the action of the respondents is violative of Articles 14 and 16 of the Constitution and is not sustainable in law.

10. For the above reasons, this OA is allowed. Respondents are directed to consider the applicant for promotion to the post of Chief Engineer on ad hoc basis maintaining his seniority over and above the promotees. We are informed that the applicant is retiring on 31.03.2017. The respondents are directed to pass the consequential order within a period of ten days, including the time for consideration by the Screening Committee, from the date of receipt of certified copy of this order. No costs.

(K N Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

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