

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 4427/2014
MA No.2095/2015
&
MA No.917/2015

Reserved on: 29.09.2015
Pronounced on: 16.10.2015

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

Sunil Kumar Mehra
s/o Sh. Surendra Mohan Lal,
Chief Town Planner,
East Delhi Municipal Corporation,
5035/3, Sant Nagar, Karol Bagh,
New Delhi – 110 005.

...Applicant

(By Advocate: Sh. Ajesh Luthra)

Versus

1. Chief Secretary, GNCTD,
Delhi Sachivalaya,
IP Estate, New Delhi-110 002.
2. Director of Local Bodies,
U.D. Department, GNCTD,
9th Level, Delhi Sachivalaya,
IP Estate, New Delhi-110 002.
3. North Delhi Municipal Corporation,
Through its Commissioner,
4th Floor, Dr. S.P.M., Civic Centre,
New Delhi – 110 002.
4. South Delhi Municipal Corporation,
Through its Commissioner,
9th Floor, Dr. S.P.M. Civic Centre,
J.L. Nehru Marg, Minto Road,
New Delhi – 02.
5. East Delhi Municipal Corporation,
Through its Commissioner,
1st Floor, 419, Udyog Sadan,
Patparganj Industrial Area,
Delhi – 92.

6. Sh. Shamsheer Singh,
Sr. Town Planner, Town Planning Deptt.,
South Delhi Municipal Corporation,
21st Floor, Dr. S.P.M. Civic Centre,
J.L. Nehru Marg, Minto Road,
New Delhi – 110 002. ...Respondents

(By Advocates: Sh. R.K. Shukla, Sh. Gyanendra Singh,
Ms. Rashmi Chopra and Sh. R.N. Singh)

ORDER (ORAL)

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

In the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the appointment of respondent no.6 who, as per the applicant, is a charge-sheeted accused facing prosecution from the CBI. The applicant is thereby impugning the order dated 12.12.2013 of the respondents transferring him to the office of respondent no.5. He also assails the order dated 04.03.2014 of respondent no.3 promoting him to the post of Chief Town Planner (hereinafter referred to as CTP) on *ad hoc* basis in PB-4 Rs.37,400-67000 + GP of Rs.10,000/- for a period of one year or till filling up of the post on regular basis, whichever be earlier to the extent of para no.3, which reads as under:-

“3. Since Sh. Sunil Kumar Mehra, Sr. Town Planner present posted in East DMC has been promoted to the post of Chief Town Planner, which is in PB-4, for which the Corporation is the competent authority, therefore Director (P), East DMC is requested to take necessary action for obtaining the approval of the Competent Authority”.

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

- “(i) *That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to issue posting order for the applicant to join back the TP Deptt. of North Delhi Municipal Corporation as Chief Town Planner, simultaneously holding the charge as Chief Town Planner of East Delhi Municipal Corporation and South Delhi Municipal Corporation, since he is the only Chief Town Planner in the combined cadre of MCD, have been promoted through the Departmental Screening Committee.*
- “(ii) *Any other relief which the Hon’ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.”*

3. The case of the applicant, in brief, is that he was an employee of erstwhile Municipal Corporation of Delhi (hereinafter referred to as erstwhile Corporation), subsequently trifurcated into three separate Corporations namely North DMC, South DMC and East DMC, vide Notification dated 29.12.2011. While there had been one post of CTP in erstwhile Corporation, three such posts were created i.e. one for each Corporation, vide order dated 18.04.2012 issued by respondent no.3 following the trifurcation. It is the case of the applicant that the respondent nos. 1 to 4 deliberately conspired to keep all the three posts of CTP vacant in order to allow the respondent no.6 to hold the charge of them in his own capacity as CTP,

who had thereby infringed upon the rights of the applicant for promotion to hold the post of CTP.

4. The applicant further submits that on 02.05.2012, respondent no.2 distributed the staff amongst the three Corporations placing him in North DMC and the respondent no.6 in South DMC. However, the applicant was posted to East DMC vide the impugned order for no apparent reasons. Aggrieved, the applicant had to approach the Tribunal by filing OA No.2839/2012 to fill up the post of CTP, which was disposed of vide Tribunal's order dated 26.08.2013 directing the respondents to give due regard to the recruitment regulations for the three posts of Chief Town Planners while making regular promotion to the same in trifurcated Corporation. This is how the applicant being the eligible candidate came to be promoted as CTP, vide the impugned order dated 04.03.2014, while the respondent no.6 could not get promoted on account of the chargesheet having been issued against him by respondent nos. 3 & 4. The applicant further contends that the post of CTP had been lying vacant since 30.04.2011, while the respondent no.6 was made Administrative In-charge of the Town Planning Department without having undergone the process of promotion by holding a DPC. It is the case of the applicant that he had been illegally transferred out from his original post of Senior

Town Planner at the behest of the respondent no.6 to the vacant post of Senior Architect in Architecture Department, vide order dated 10.05.2011. He further submits that his transfer had been designed to facilitate handing over charge of North DMC to the respondent no.6, which had been done accordingly. The respondent no.6, despite not having been cleared by the DPC for the post of CTP, was unauthorizedly using the designation as CTP which was later corrected by the respondent no.2, vide his OM dated 30.09.2013.

5. The applicant has adopted a number of grounds for the Original Application to succeed. As stated earlier, the primary grounds of the applicant are that while he is the only Senior Town Planner in the combined cadre of erstwhile Corporation vide the DPC dated 08.02.2014, the respondent no.6 is not promoted to the post of CTP; the respondent nos.1 to 4 and 6 have conspired to keep the post of CTP vacant and allowed the respondent no.6 to hold the said post; the applicant has been posted to East DMC in contravention of Section 90 A (1)(b) [Annexure A-9], while there is no such provision in the statute to make inter-cadre transfers once the allocation of staff has been made. The applicant has relied upon the order of this Tribunal in OA No.2276/2012 decided on 08.03.2013 wherein the Tribunal observed as under:-

“7. We would, accordingly, allow the OA and invalidate the impugned posting of the applicant who is held entitled to retention in the native dispensation wherein he is employed.”

6. The applicant has also alleged mala fide against respondent nos. 1 to 5 but has not impleaded them personally as party respondents, hence, the allegation of mala fide could not be pressed against them.

7. The respondent nos. 1 & 2 have filed a counter affidavit stating that the respondent no.2 had made the distribution of sanctioned posts in consultation with the erstwhile Corporation. However, Section 90-A of the DMC (Amendment) Act, 2011 did not provide for promotion and other service conditions which are to be governed by the recruitment rules framed under Sections 98, 480 read with Section 484 A (ii) of the Act *ibid*. The power and functions of the respondent no.2 have been defined under Section 484-A of the Act and is largely coordinating by nature. The respondent nos.1 & 2 have, on these grounds, resisted the relief prayed for by the applicant in the instant OA.

8. The respondent no.5 has also filed a counter affidavit wherein he has washed his hands off the entire matter by merely stating that he is lacking in authority to transfer the applicant.

9. The respondent no.3 has filed a more detailed counter affidavit rebutting the averments of the applicant made in the OA. It has been stated that following the retirement of one V.K. Bugga, the then CTP on 30.04.2011, the file had been processed for promotion wherein it was found that as per the recruitment rules, Senior Town Planners were not eligible for promotion to the post of CTP. The matter was, therefore, not placed before the departmental Screening Committee and a letter was circulated on 17.11.2011 for filling up the said post on deputation basis. The competent authority then held that the post of CTP being of a technical nature should be filled up by a duly qualified person as per the recruitment rules. In the intervening period, senior-most officers of the department should exercise administrative control without there being change in designation. Accordingly, the respondent no.6, being the senior-most officer in the Town Planning Department, was allowed to exercise and discharge the day-to-day routine functions of the Town Planning Department in his own post, and following the trifurcation of erstwhile Corporation, the respondent no.2 issued an office order dated 04.05.2012 wherein the respondent no.6 had been shown as the CTP South DMC with additional charge of North and South DMCs though he has been basically a Senior Town Planner. Aggrieved, the applicant approached the Tribunal vide OA

No. 2276/2012 for quashing of the order of the respondent no.2 designating the respondent no.6 as CTP, vide order dated 04.05.2012. Consequent upon the Tribunal's order in the aforesaid OA, the respondent no.2 vide its order dated 13.09.2013 modified the designation of the respondent no.6 to be read as Senior Town Planner instead of CTP while continuing to be the Administrative In-charge of three Corporations. On 12.12.2013, the applicant was transferred from North DMC to East DMC with direction to look after the charge of CTP. Subsequently, the applicant was promoted to the post of CTP on *ad hoc* basis on the recommendations of the departmental Screening Committee held on 04.03.2014 and remained posted in East DMC. The candidature of the respondent no.6 was also considered but as RDA bearing no.1/536/2006 was pending against him, the recommendations qua the respondent no.6 had been kept under sealed cover. The respondent no.3 further submits that *"consequent upon his exoneration in the aforesaid RDA, after taking approval of the Commissioner, North DMC fresh RDA/COP reports in respect of Shri Shamsher Singh was called, the sealed cover was opened and after approval of the Commissioner, North DMC dated 04.02.2015 he was also given ad hoc promotion to the post of Chief Town Planner in Pay Band-4 Rs.37400-67000 + GP Rs.10,000. However, since Shri Shamsher Singh was posted*

in the South DMC, and he was promoted in PB-4, for which the Corporation is the Competent Authority, the Director (P) South DMC was requested to take necessary action for obtaining the approval of the Competent Authority.” The respondent no.3 has also debunked the claim of the applicant that he being the employee of North DMC could not be transferred to East DMC and that the respondent no.2 has no authority to transfer, as the similar issue has already been adjudicated upon by the Tribunal in **V. Satish Kumar V/s. New Delhi Municipal Corporation & Ors.** [OA No.3645/2013 decided on 31.10.2014] The respondent no.3 has also relied upon the decision of the Tribunal in **Surendra Kumar etc. V/s. South Delhi Municipal Corporation & Ors.** [OA No.603/2015 & OA No.1101/2015 decided by the Principal Bench of the Tribunal by a common order dated 12.08.2015].

10. The applicant has filed rejoinder to the counter affidavits of respondent nos. 1 & 2 and respondent no.3 but has not filed any rejoinder to the counter affidavit of respondent no.5. In reply to the respondent nos. 1 & 2, the applicant has stated that the charge of malice stands admitted by allowing the respondent no.6 to impersonate as CTP for a long period of four years. He has represented the

charge of corruption against the respondent no.6 and other respondent nos. 1 to 4.

11. In the rejoinder to the counter affidavit of respondent no. 3, the applicant states elaborately the same points, which need not be gone in detail lest they add to bulk to the order.

12. By and large, the learned counsels appearing for the parties have followed the pleadings in their oral submissions. However, Sh. R.N. Singh, learned counsel for the respondents was vehement in his assertions that the respondent no.6 was the senior-most officer and also holding the post of CTP as the applicant; the order of posting had been passed by the North DMC; *mala fide* cannot be inferred on this basis alone; no service conditions have been affected; the applicant is holding two charges of South and East DMCs; and it is not for the employee to demand a particular posting, rather he should rest satisfied with the charges that he is holding.

13. We have carefully gone through the pleadings of rival parties as also the judicial pronouncements cited on their behalf. We have also patiently heard the arguments advanced by their respective counsels. The issues, which

emerge for our consideration, are relatively simple and are framed as under:-

1. *Whether the transfer of the applicant to the East DMC was within competence of the transferring authority?*
2. *Whether the respondent no.6 has been illegally holding the charge of CTP of North DMC?*
3. *What relief, if any, could be granted to the applicant?*

14. Insofar as the first of the issues is concerned, it is an admitted fact that the applicant had approached this Tribunal by way of OA No.2839/2012 and other connected OAs for amelioration of his grievance, which were disposed of by a common order dated 26.08.2013 directing that meeting of the departmental Screening Committee be conducted to make regular promotions in respect of three posts of CTP. For the sake of better clarity, we extract para nos. 21 & 22 of the order as under-

“21. It is settled position of law that the selection process or method of recruitment is prescribed in the Recruitment Rules and cannot be evolved by the recruiting agency. In Dr. Krushan Chandra Sahu & others Vs State of Orissa & others (JT 1995 (7) SC 137), it has been held thus:

“33. Now, power to make rules regulating the conditions of service of persons appointed on Govt. posts is available to the Governor of the State under the Proviso to Art. 309 and it was in exercise of this power that the present Rules were made. If the statutory Rules, in a given case, have not been made, either by the Parliament or the State Legislative, or, for that matter by the Governor of

the State, it would be open to the appropriate Government (the Central Government under Art. 73 and the State Government under Art. 73 and the State Government under Art. 162) to issue executive instructions. However, if the Rules have been made but they are silent on any subject or point in issue, the omission can be supplied and the rules can be supplemented by executive instructions. [See Sant Ram v. State of Rajasthan, (AIR 1967 SC 1910)].

34. In the instant case, the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be determined. The members of the Selection Board, of their own, decided to adopt the confidential character rolls of the candidates who were already employed as Homeopathic Medical Officers, as the basis of determining their suitability.

35. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Art. 309. It is basically the function of the rule making authority to provide the basis for selection. This Court in State of Andhra Pradesh v. V. Sadanandam, AIR 1989 SC 2060 observed as under (para 16, at pp. 2065-66 of AIR):-

"We are now only left with the reasoning of the Tribunal that there is no justification for the continuance of the old Rule and for personnel belonging to either zones being transferred on promotion to offices in other zones. In drawing such conclusion, the Tribunal has travelled beyond the limits of its jurisdiction. We need only point out that the mode of recruitment and the category from which the recruitment to a service should be made are all matters which are exclusively within the domain of the executive. It is not for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made as they are

*matters of policy decision falling exclusively within the purview of the executive".
(Emphasis supplied)*

36. The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In *Ramachandra Iyer v. Union of India*, (1984) 2 SCR 200 : (AIR 1984 SC 541), it was observed (para 44, at p.562 of AIR):-

"By necessary inference, there was no such power in the ASRB to add to the required qualifications. If, such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reasons that such deviation from the rules is likely to cause irreparable and irreversible harm".

37. Similarly, in *Umesh Chandra Shukla v. Union of India*, 1985 Suppl (2) SCR 367 : (AIR 1985 SC 1351), it was observed that the Selection Committee does not possess any inherent power to lay down its own standards in addition to what is prescribed under the Rules. Both these decisions were followed in *Sh. Durgacharan Misra v. State of Orissa*, (1987) 2 UJ (SC) 657 : (AIR 1987 SC 2267) and the limitations of the Selection Committee were pointed out that it had no jurisdiction to prescribe the minimum marks which a candidate had to secure at the viva voce test.

38. It may be pointed out that rule making function under Art. 309 is legislative and not executive as was laid down by this Court in *B.S. Yadav v. State of Haryana*, AIR 1981 SC 561. For this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection.

39. If it were a mere matter of transition from one service to another service of similar nature as, for example, from Provincial Forest Service to All India Forest Administrative Service, the confidential character rolls could have constituted a valid basis for selection either on merit or suitability as was laid down by this Court in *Pervez Qadir v. Union of India*, 1975(2) SCR 432 : AIR 1975 SC 446 : (1975)

4 SCC 318 which has since been followed in *R.S. Dass v. Union of India*, AIR 1987 SC 593. But in the instant case, appointments are being made on posts in an entirely new service, though the educational qualifications required to be possessed by the candidates are the same as were required to be possessed in their earlier service.

40. A candidate in order to be suitable for appointment on a teaching post must have at least three qualities; he should have thorough knowledge of the subject concerned; he should be organised in his thoughts and he should possess the art of presentation of his thoughts to the students. These qualities cannot possibly be indicated or reflected in the confidential character rolls relating to another service, namely, the service in the Health Department as Homoeopathic Medical Officers where the character rolls would only reflect their integrity, their punctuality, their industry and their evaluation by the Reporting or the Accepting Officer recorded in the annual entries. True it is that the candidates being already serving officers, their character rolls have to be looked into before inducting them in the new service but this can be done only for the limited purpose of assessing their integrity etc. These character rolls, however, cannot form the SOLE basis for determination of their suitability for the posts of junior teachers in the Medical Colleges. Then, what formula or method should be adopted to assess these qualities is the question which next arises. This Court in *Liladhar v. State of Rajasthan* (1981) 4 SCC 159 : AIR 1981 SC 1777 pointed out (at p.1778 of AIR) :-

"The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services". (emphasis supplied)

22. In view of the aforementioned, respondents are directed to give due regard to the recruitment

regulations for the three posts of Chief Town Planners while making regular promotion to the same in trifurcated Corporation. OA stands disposed of. No costs.”

Accordingly, the applicant came to be promoted to the post of CTP on the basis of the recommendations of departmental Screening Committee and the order was issued on 04.03.2014, which reads thus:

“On the recommendations of the Screening Committee held on 05.02.2014 and with the approval of Commissioner, North Delhi Municipal Corporation dated 04.03.2014, Shri Sunil Kumar Mehra, Sr. Town Planner presently posted in East Delhi Municipal Corporation, is hereby promoted to the post of Chief Town Planner on ad hoc basis in Pay Bank 4 Rs.37400-67000 + GP 10000, initially for a period of one year or till the post is filled up on regular basis, whichever is earlier, subject to outcome of pending court cases, if any.

2. The above said ad hoc appointment shall be subject to the following terms and conditions:-

xxx

xxx

xxx

3. Since Shri Sunil Kumar Mehra, Sr. Town Planner present posted in East DMC has been promoted to the post of Chief Town Planner, which is in PB 4, for which the Corporation is competent authority, therefore, Director (P), East DMC is requested to take necessary action for obtaining the approval of the Competent Authority.”

The feasibility of transfer had also been challenged in two earlier OAs namely **V. Sathish Kumar V/s. New Delhi Municipal Corporation** (supra) and **Surendra Kumar &**

Ors. V/s. South Delhi Municipal Corporation & Ors.
(supra).

15. In **V. Sathish Kumar V/s. New Delhi Municipal Corporation** (supra), the applicant, who was working as Deputy Director (Horticulture) in North DMC, challenged the order of transfer from North DMC to East DMC on the ground that the newly added Section 90-A of the DMC Act 1957 did not permit inter-Corporation transfers. In this regard, the Tribunal held as under:-

“8. Accordingly, by virtue of the provisions of the Act, a fortiori, Section 90A w.e.f. 24.01.2012, all the officers and employees of the erstwhile Corporations at the Ward and Zonal level have become officers and employees of the respective new Corporations, wherein they have been working as on 24.01.2012. However, the officers and employees other than those at Ward and Zonal level, are required to be divided amongst the new Corporations by the Director of the Local Bodies in consultation with the Commissioner of the erstwhile Corporation.

9. The applicant filed Annexure A8 Order dated 18.04.2012, along with Annexures I to XXII whereunder the creation/abolition/merger and distribution of existing Headquarter Posts and centralized cadre and Engineering Cadre posts among the three Corporations is approved. However, since the same is incomplete, and does not contain the Annexure pertaining to the Department of Horticulture, on direction, the respondents filed the complete copy of the said order dated 18.04.2012. A bare perusal of the aforesaid Order dated 18.04.2012, in particular, Annexure A8, pertaining to the Department of Horticulture, clearly indicate that the post of Deputy Director (Horticulture), in which the applicant is

working, is an Headquarter post but not a post at Ward or Zonal level and hence, falls under Section 90A(1)(b) of the Delhi Municipal Corporation Act, 1957. As observed above, in so far as the officers and employees of the erstwhile Corporation, other than those covered under Section 90A(1)(a), shall be divided amongst the new Corporations by the Director of local bodies in consultation with the Commissioner of the erstwhile Corporation. Since the post of Director (Horticulture) wherein the applicant is working is a post other than those at Ward and Zonal level, the contention of the applicant that he becomes the officer of the North Delhi Municipal Corporation w.e.f. 24.01.2012 and that he cannot be transferred to any other Corporation is unsustainable.”

16. In **Surendra Kumar & Ors. V/s. South Delhi Municipal Corporation & Ors.** (supra), the issues framed as Issues no. 1,2 & 4, read thus:-

1. *Whether the act of trifurcation of the erstwhile unified MCD into three corporations consequent upon amendment in the DMC Act is final and irrevocable in respect of their staff?*
2. *Whether the powers over service matters including promotion have devolved upon the three Corporations consequent to the act of trifurcation and are not to be interfered with by others?*

Xxx xxx xxx

4. *Whether the powers of making appointments/ promotions in respect of Group – A employees can be delegated to the respondent no.3?*

17. In discussion, the first two issues were comprehensively dealt with together wherein the Tribunal held as under:-

“25. It would be apparent from a plain reading of this Section that the DLB has not been placed as an authority above the Commissioner, whose role within the Corporation continues to be paramount. Per contra, the DLB is only a facilitation body to assist the Government and to coordinate in respect of common facilities and services that are under the Management and control of the Corporation in whose areas they are located, to decide utilization of various assets and discharge of liabilities as an interim measure; to frame recruitment rules for various posts; and to resolve functional and administrative anomalies/ difficulties arising after the constitution of three corporations in consultation with their respective Commissioners. It arises from the above provision that –

- (i) There is a presumption that certain services will continue to be common to all the three corporations even after the act of trifurcation;*
- (ii) Some of these assets and services will have to be utilized commonly;*
- (iii) The services of personnel, namely, Group-A officers would be included for common services and utilization;*
- (iv) Functional and administrative anomalies and difficulties are bound to arise, and the same would be resolved in consultation with the Commissioner of the erstwhile Municipal Corporation;*

26. We take further note of the fact that Section 515 also provides for powers to remove difficulties, which is being reproduced hereunder:-

“515. Power to remove difficulties.- If any difficulty arises in relation to the transition from the provisions of any of the enactments referred to in section 516, or in giving effect to the provisions of this Act, the Government may, by order as occasion requires, do anything which

appears to it to be necessary for the purpose of removing the difficulty;

Provided that no such order shall be made after the expiration of two years from the establishment of a Corporation.”

It is clear from a plain reading of the above provision that difficulties will arise while making repeals and savings in certain Acts or other provisions of this Act including that of Section 90-A and Section 3(1) (b) &(2). It has been left to the Government of NCT of Delhi to remove these anomalies/difficulties. It may do so by order or by some instructions which may appear to be necessary in this regard.

27. The sum total of this discussion is that the Act has been so designed that certain facilities/services cannot be separated and will have to be run jointly amongst the three corporations. We also hold that the office of the DLB has been created in order to facilitate the management and running of these services. We further hold that the higher services i.e. Group-A services by implication shall continue to be a part of the common services. This takes care of the argument of the applicant that these have been separated in all respect irrevocably, and others are not to interfere. This answers the issue no.2.”

18. In respect of fourth issue, the Tribunal observed as under:-

“38. Insofar as issue no.4 is concerned, it has already been partly answered while dealing with issue nos.1 and 2 above. We have already concluded while dealing with these issues that there is nothing in the statute at all to prohibit designation of one agency as the nodal agency for undertaking establishment matters once a decision has been taken that certain services and cadres will be common. To the contrary, we go ahead to hold that where a joint cadre is being formed, the responsibilities of dealing with the services

matters of the cadres will have to be anchored by any one organization in absence of which immense practical difficulties will arise. The choice is simple that either the responsibilities are devolved upon any one organization or the cadre does not continue to be common.”

19. Insofar as the second of the issues in the instant OA is concerned, the pleadings and the oral submissions make out that respondent no.6 is a rank corrupt officer and has been illegally made to retain the charge of the post of CTP in North DMC. The entire episode has been made out to be a case of conspiracy to aid and abet corruption. However, who is corrupt and who is not is to be decided by the employing organization. The Government Agencies have carefully devised procedures for the same. We have already extracted from the counter affidavit filed on behalf of the respondent no.3 that the recommendations of the departmental Screening Committee relating to respondent no.6 had been kept under sealed cover. However, the charges levelled against the respondent no.6 having been enquired into and found not substantiated, the sealed cover was opened and the respondent no.6 had also been promoted as CTP.

20. Regarding *mala fide*, it must be stated that it is easy to allege but difficult to prove. The burden of proving *mala fide* lies heavily on the person who alleges it. In this regard, we

take note of the following decisions of the Hon'ble Apex Court wherein the issue of *mala fide* has been discussed in depth:-

"The term *malafide* has been defined by the Apex Court in the case of **State of Punjab & Another versus Gurdial Singh & Others** [(1980) 2 SCC 471] while discussing what is *mala fide* and how it is to be proved and held as under:-

"9. The question then, is what is *mala fides* in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust- that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised *bona fide* for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent

of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides on fraud on power vitiates the acquisition or other official act.”

21. Further, in the case of **Ravi Yashwant Bhoir versus District Collector Raigarh & Others** [2012 (4) SCC 407], the Hon’ble Supreme Court made a comprehensive view of its own earlier judgment and held as under:-

“47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice- in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law. (See: Addl. Distt. Magistrate, Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207; Union of India thr. Govt. of Pondicherry & Anr. v. V. Ramakrishnan & Ors., (2005) 8 SCC 394; and Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors., AIR 2010 SC 3745).”

22. In the case of in **Institute of Law versus Neeraj Sharma** Manu SC0841/2014 the Hon’ble Apex Court has held as under:

*“29. Further, we have to refer to the case of **Akhil Bhartiya Upbhokta Congress v. State of M.P. and***

Ors. [(2011) 5 SCC 29], wherein this Court has succinctly laid down the law after considering catena of cases of this Court with regard to allotment of public property as under:

50. For achieving the goals of justice and equality set out in the Preamble, the State and its agencies/instrumentalities have to function through political entities and officers/officials at different levels. The laws enacted by Parliament and the State Legislatures bestow upon them powers for effective implementation of the laws enacted for creation of an egalitarian society. The exercise of power by political entities and officers/officials for providing different kinds of services and benefits to the people always has an element of discretion, which is required to be used in larger public interest and for public good.....In our constitutional structure, no functionary of the State or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and is an antithesis to the concept of the rule of law.

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54. In *Breen v. Amalgamated Engg. Union*, Lord Denning MR said: (QB p. 190, B-C)

... The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside. That is established by *Padfield v. Minister of Agriculture, Fisheries and Food* which is a landmark in modern administrative law.

55. In *Laker Airways Ltd. v. Deptt. of Trade* Lord Denning discussed prerogative of the Minister to give directions to Civil Aviation Authorities overruling the specific provisions in the statute in the time of war and said: (QB p. 705, F-G)

Seeing that the prerogative is a discretionary power to be exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive.

56. This Court has long ago discarded the theory of unfettered discretion. In *S.G. Jaisinghani v. Union of India*, Ramaswami, J. emphasised that absence of arbitrary power is the foundation of a system governed by rule of law and observed: (AIR p. 1434, para 14)

14. In this context it is important to emphasise that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law.....

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59. In *Kasturi Lal Lakshmi Reddy v. State of J&K*, Bhagwati J. speaking for the Court observed: (SCC pp. 13-14, para 14)

14. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid....

61. The Court also referred to the reasons recorded in the orders passed by the Minister for award of dealership of petrol pumps and gas agencies and observed: (*Common Cause* case, SCC p. 554, para 24)

24. ... While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective

criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness. It is essential to lay down as a matter of policy as to how preferences would be assigned between two persons falling in the same category....

62. In *Shrilekha Vidyarthi v. State of U.P.* the Court unequivocally rejected the argument based on the theory of absolute discretion of the administrative authorities and immunity of their action from judicial review and observed: (SCC pp. 236, 239-40)

29. It can no longer be doubted at this point of time that Article [14](#) of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional....”

Here, we agree that when the charges against the respondent no.6 have been enquired into and found incorrect, the allegation of *mala fide* has been largely belied.

23. We are also of the considered opinion that since respondent nos.1 to 4 have not been personally impleaded in the instant OA, the allegation of *mala fide* does not travel upto the mark. Hence, the issue is answered in the terms that the respondent no.6 has not been holding the charge of CTP of respondent no.3 in an illegal manner but as per the procedure prescribed.

24. In conclusion, we would like to affirm that what the applicant has been arguing is that he should be given the charge of North DMC. He is already holding the charge of

two DMCs but does not seem to be satisfied. His prayer has fallen flat on his face in light of the fact that the allegations against the respondent no.6 were enquired into and found incorrect leading to opening of the sealed cover and his promotion. Therefore, there is little that survives in the matter. We would also like to hold in the same breath that it is the discretion of the employer as to where a person should be posted. We have already held that the three Corporations are entitled and competent to have a unified cadre and the services above the zone are to be treated in an integrated manner as joint services. Therefore, we find no occasion or ground to interfere with the order, rather we take note of the fact that the applicant is not satisfied with the charges of the two Corporations, which he is holding, but would like to hold charges of three DMCs. We would here not hesitate to say that the contentment is a virtue that has no peers. However, the applicant is well advised to excel in his own charge and not to look towards what others are doing.

25. Finding no merits in the present OA, the same is dismissed without there being any order as to costs.

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

(A.K. Bhardwaj)
Member (J)

/AhujA/