

**Central Administrative Tribunal
Principal Bench**

OA No.4456/2015

New Delhi, this the 20th day of July, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Shri Anil Dalal

Executive Engineer (Civil)

R/o 3402, Mohindra Park, Rani Bagh,

Shakur Basti,

Delhi 110 034.

.... 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.

4. Union Public Service Commission (UPSC)

Through its

Chairman

Dholpur House, Shahjahan Road,

New Delhi.

... Respondents.

(By Advocates : Shri R. N. Singh for R-1 to 3

Shri R. V. Sinha for R-4).

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman :

The applicant who is a degree holder engineer was initially appointed as Assistant Engineer (Civil) in 1991. On acquiring the

minimum qualifying service of five years, he became eligible for promotion to the post of Executive Engineer (Civil) in the year 1996.

2. It is stated that no DPC for regular promotion of the Assistant Engineers (Civil) to the post of Executive Engineers (Civil) was held for the vacancies fallen vacant during the period 1997 to 2008. Some of the affected persons approached the Hon'ble Delhi High Court through a writ petition wherein directions were issued for convening the DPC pending since 1997. Directions of the Hon'ble High Court having not been implemented, contempt proceedings came to be initiated, and on account of the said contempt proceedings a DPC was convened in July/August, 2008 in respect to the vacancies for the period 1997 to 2008 for consideration of the eligible Assistant Engineers (Civil) for promotion to the post of Executive Engineers (Civil).

3. It is admitted case of the applicant that in the year 2001, he came to be involved in a criminal case as CC No.03/2001 Police Case No.1489/2001, wherein a charge sheet was filed on 18.03.2003. It is further case of the applicant that on account of pendency of the aforesaid criminal case against him, sealed cover procedure was adopted while considering him for promotion to the post of Executive Engineer (Civil) by the DPC held in the year 2008 against the vacancies for the years 2006-2007. The said criminal case has been disposed of resulting in acquittal of the applicant vide judgment dated 29.05.2014. The applicant furnished the information regarding his acquittal to respondents No.1 & 3.

4. Shri Rajeev Sharma, Learned counsel for the applicant has made a statement at the Bar that no appeal was preferred against his acquittal, and no appeal is pending in any competent court as on date. The applicant made various representations to the respondents seeking action on the recommendations of the DPC kept in sealed cover.

5. It is further admitted case of the applicant that a fresh charge sheet was issued to him on 29.04.2010 and disciplinary proceedings were pending against him on the basis of the said charge sheet. Learned counsel for the applicant submits that the subsequent charge sheet does not create a legal embargo for consideration of applicant's promotion as regular Executive Engineer (Civil) if he makes the grade on consideration of the recommendations of the DPC held in the year 2008 which were kept in a sealed cover. It is also on record that a review DPC was held in the year September, 2015, but again his case was kept in sealed cover.

6. Only the UPSC has filed its reply, and other respondents have chosen not to file reply, despite opportunity granted in this regard. Though reply of the UPSC is not relevant for purposes of consideration of the issue involved in this case, however, even from the reply of the UPSC it appears that in the opinion of the UPSC, the administrative department is required to consider the question of opening of sealed cover on acquittal of a person from a criminal case or termination of the departmental proceedings.

7. Be that as it may, the applicant was duly considered by the DPC held in the year 2008 and by the review DPC in the year 2015. On both occasions, his consideration was kept in sealed cover on account of pendency of criminal proceedings against him which terminated in his acquittal vide judgment dated 29.05.2014. The subsequent charge sheet issued in the year 2010 will have no bearing so far opening of sealed cover for consideration of the recommendations of the DPC held in the year 2008 is concerned.

8. In view of the totality of the circumstances, this OA is allowed with following directions:-

- (a) The respondents will open the sealed cover regarding applicant's consideration by the DPC held in the year 2008 as also the review DPC held in the year 2015 within a period of one month from the date of receipt of copy of this order.
- (b) If the applicant is found fit, the competent authority would promote him in accordance with law from the date his juniors were so promoted on regular basis as Executive Engineer (Civil) within a period of one month from the date of opening of sealed cover. It is made clear that this direction is subject to any other embargo, if any, and in that eventuality, the respondents would pass a speaking order.

(K. N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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