

**Central Administrative Tribunal
Principal Bench**

OA 4512/2013

this the 19th day of August, 2015

**Hon'ble Mr. V.Ajay Kumar, Member (J)
Hon'ble Mr. P.K.Basu, Member (A)**

Narender Singh Pundhir
S/o Late Shri Collector Singh
R/o 11/7, Back Side
Ashok Nagar, New Delhi Applicant

(By Advocate:Shri A.K.Singh)

Versus

1. North Delhi Municipal Corporation
through its Commissioner
Civic Centre, J.L.N. Marg
New Delhi
2. The Addl. Deputy Commissioner (DEMS)
North Delhi Municipal Corporation
Ambedkar Stadium, Delhi Respondents

(By Advocate:Shri R.K.Jain)

ORDER

By Hon'ble Mr. P.K.Basu,

The applicant joined as Mate in Delhi Development Authority. He was promoted as Assistant Sanitary Inspector by DDA in April, 1982 and thereafter as Sanitary Inspector in April, 1985. In June 1988, the applicant alongwith others was transferred to Municipal Corporation of Delhi from where he superannuated. In March 2011, the applicant came to know that one of his juniors, namely, Shri Raj Pal Singh, had already been promoted to the post of Chief Sanitary Inspector and thereafter Sanitation

Superintendent. Through an application under RTI Act the applicant obtained tentative seniority list and the posting order of Shri Raj Pal Singh w.e.f.28.10.1997 to the post of Chief Sanitary Inspector and also promotion order of Raj Pal Singh to the post of Sanitation Superintendent w.e.f.03.01.2003. The applicant made a representation to the respondents but no decision has been taken thereon. He, thereafter, filed OA No.1999/2012 before this Tribunal and the Tribunal vide its order dated 06.07.2013 directed the respondents to decide his representation. The respondents have now passed the impugned order dated 26.07.2013, in which they have not considered him for promotion to the post of Chief Sanitary Inspector on the ground that his ACRs were not completed and even at present his ACRs are incomplete and the department also did not promote any Sanitary Inspector belonging to the DDA till the date of retirement of the applicant, i.e.30.11.2008.

2. The learned counsel for the applicant drew our attention to the tentative final seniority list of Sanitary Inspectors transferred from DDA to MCD (Annexure A-2). In the said seniority list, name of the applicant is placed at Sl. No.7 and the name of Shri Raj Pal Singh is placed at Sl. No.8. Thus, Raj Pal Singh is junior to the applicant.

3. The learned counsel further pointed out to the DOP&T OM dated 10.04.1989 which is as follows :-

"(a) The DPC should consider CRs for equal number of years in respect of all officers considered for promotion subject of (c) below.

(b) The DPC should assess the suitability of the officers for promotion on the basis of their service record and with particular reference to the CRs for 5 preceding years. However, in cases where the required qualifying service is more than 5 years, the DPC should see the record with particular reference to the CRs for the years equal to the required qualifying service. (If more than one CR has been

written for a particular year, all the CRs for the relevant year shall be considered together as the CR for one year.)"

(c) Where one or more CRs have not been written for any reason during the relevant period, the DPC should consider the CRs of the years preceding the period in question and if in any case even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs required to be considered as per (b) above. If this is also not possible, all the available CRs should be taken into account."

4. It is, therefore, argued that as per the DOP&T OM, the DPC should consider the CRs of the years preceding the period in question and if in any case, even these are not available, the DPC should take the CRs of the lower grade into account to complete the number of CRs. Instead of the plea taken by the department that he cannot be promoted as ACRs are not available, incidentally, the order dated 26.07.2013 refers to some departmental proceeding, which is not relevant at all because the applicant has been exonerated by the department.

5. The only grounds taken by the respondents is that

- (i) His ACRs are not complete; and
- (ii) No SI belonging to DDA cadre has been promoted till 30.11.2008, which is the date of retirement of the applicant.

6. Of the two counts, the first question of ACRs is not applicable here as the DOP&T circular dated 10.04.1989 is very clear that the department ought to have followed these instructions which they have not followed. As regards, the respondents' statement that no SI belonging to DDA cadre before the retirement of applicant has been promoted, this also is an unacceptable argument. This is no question of SIs being promoted who came from DDA is also wrong. In the combined seniority list of Sanitary Inspector placed at Annexure-2, which is seniority list of SIs transferred

from DDA to MCD, the applicant is shown senior to Shri Raj Pal Singh who was promoted as Sanitary Inspector w.e.f.28.10.1997, which is well before the superannuation of the applicant. So, clearly the respondents are trying to mislead. It is clear case of denial of justice.

7. The OA is, therefore, allowed and the impugned order dated 26.07.2013 is quashed and set aside. The respondents are further directed to promote the applicant to the post of Chief Sanitary Inspector w.e.f.28.10.1997 and the post of Sanitation Superintendent w.e.f.03.01.2003.

He will be considered subject to (Mishra Ji.....

No costs.

(P.K.BASU)
MEMBER(A)

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(V.Ajay Kumar)
MEMBER (J)