

**Central Administrative Tribunal  
Principal Bench, New Delhi**

O.A. No.2163/2017  
with  
O.A. No.3685/2017

Friday, this the 24<sup>th</sup> day of August, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Pradeep Kumar, Member (A)**

O.A. No.2163/2017

Inderjit Singh Sehgal (Aged 56 years)  
(Group A)  
Son of Shri M S Sehgal  
r/o Flat No.22, Shubh Niketan  
Block A-4, Paschim Vihar,  
New Delhi – 110 063  
(Presently working as Executive Engineer (Civil)  
In the DSIIDC Ltd.

..Applicant

(Mr. R A Sharma, Advocate)

Versus

1. Chairman cum Managing Director  
DSIIDC Ltd.  
N-36, Bombay Life Building  
Connaught Circus,  
New Delhi – 110 001
2. Divisional Manager (Personnel)  
DSIIDC Ltd.  
N-36, Bombay Life Building  
Connaught Circus,  
New Delhi – 110 001

..Respondents

(Ms. Deepali Gupta, Advocate)

O.A. No.3685/2017

Inderjit Singh Sehgal (Aged 56 years)  
(Group A)  
Son of Shri M S Sehgal  
r/o Flat No.22, Shubh Niketan

Block A-4, Paschim Vihar, New Delhi – 110 063  
(Presently working as Executive Engineer (Civil)  
In the DSIIDC Ltd.

..Applicant

(Mr. R A Sharma, Advocate)

Versus

1. Delhi State Industrial & Infrastructure Development Corporation Ltd. through its Managing Director  
N-36 Bombay Life Building  
Connaught Circus, New Delhi – 110 001

2. Divisional Manager (Personnel)  
DSIIDC Ltd.  
N-36, Bombay Life Building  
Connaught Circus, New Delhi – 110 001

3. Sh. Gajender Sharma  
EE (Vigilance), DSIIDC Ltd.  
(Recently promoted to the post of SE (C)/DSIIDC)

(Notice to be served through respondent No.2)

..Respondents

(Ms. Deepali Gupta, Advocate for respondent Nos. 1 & 2 –  
Respondent No.3 in person)

## **O R D E R (ORAL)**

**Justice L. Narasimha Reddy:**

O.A. No.2163/2017

The applicant joined the services of Delhi State Industrial & Infrastructure Development Corporation (DSIIDC) Limited, i.e., 1<sup>st</sup> respondent herein, as Junior Engineer (Civil) in the year 1988. Thereafter, he was promoted to the post of Assistant Executive Engineer (Civil) in the year 2001 on *ad hoc* basis and was regularized in that capacity through order dated

08.07.2014 w.e.f. 23.07.2010. The Recruitment Rules provide for promotion to that post, failing which through deputation.

2. The respondents issued a Notification dated 07.06.2017 inviting applications for appointment to the post of Superintending Engineer (Civil) through deputation. Challenging the said Notification, the applicant filed the O.A No.2163/2017. He contends that when the Recruitment Rules provide for appointment through promotion and he had acquired qualification for that post, there was absolutely no basis for issuing the Advertisement.

3. The respondents filed their counter affidavit in this O.A. (O.A. No.2163/2017), stating that the applicant, no doubt, has acquired eligibility for promotion to the post of Superintending Engineer (Civil), but the Departmental Promotion Committee (DPC) could not be held on account of the fact that a verification as to the genuineness of the certificates of Degree in Engineering, held by various incumbents is under process. It is also stated that as and when the DPC meets, the case of the applicant would be considered.

4. Through an order dated 18.10.2017, the 1<sup>st</sup> respondent promoted two Executive Engineers (Civil), namely, Mr. Anil Kumar Jain and Mr. Gajender Sharma as Superintending Engineers (Civil) on the basis of the recommendations made by the DPC. The applicant challenges the same by filing O.A.

No.3685/2017. His plea is that though he is senior to Mr. Gajender Sharma and his Annual Performance Appraisal Reports (APARs) are clear in all respects, he was not issued orders of appointment. Further, he submits that the observations made in the order of appointment that his case would be considered after viewing his overall performance, cannot be countenanced in law and that he has been denied promotion without any basis.

5. The official respondents as well as private respondent have filed separate counter affidavits opposing that O.A. According to them, though the DPC did not find anything adverse to the applicant, they thought it fit to defer his case for the time being with the direction to view his overall performance, and obviously, for that reason, even the inter-seniority between the candidates, whose cases were recommended for promotion, was not decided. It is also pleaded that the case of the applicant would be considered in the next round of selection and if he is found fit, his seniority will be restored.

6. We have considered the arguments of learned counsel for the parties.

7. In the 1<sup>st</sup> O.A., i.e., O.A. No.2163/2017, the applicant has challenged the Notification issued inviting applications for deputation. It is not in dispute that the Recruitment Rules

provide for promotion, failing which, through deputation. From the facts mentioned in the counter affidavit, it is clear that 4 more posts were added to the existing cadre of Superintending Engineer. The respondent-organization was suffering due to large number of vacant posts of Superintending Engineer being kept pending verification of Engineering degree certificates. A decision was taken by the management to fill the newly added posts through the process of deputation, that too, as a stop gap arrangement. It is further stated that the applicant had acquired eligibility to be promoted and his case will be considered for promotion as and when DPC meets.

8. Once the applicant's right to be promoted is preserved, mere issuance of Advertisement for deputation cannot be said to be detrimental to the interest of the applicant. It is for the respondents to make arrangements to ensure that the work of organization does not suffer. As long as the right of the applicant for promotion is preserved and the vacancies are made available, he cannot be said to have suffered any detriment.

9. We, therefore, dismiss O.A. No.2163/2017 as devoid of any merit. The interim order dated 06.07.2017 passed therein shall stand is vacated.

10. Coming to the 2<sup>nd</sup> O.A., i.e., O.A. No.3685/2017, the applicant feels aggrieved by the order impugned dated 18.10.2017 through which, two Executive Engineers (Civil), namely, Mr. Anil Kumar Jain and Mr. Gajender Sharma (respondent No.3) were promoted as Superintending Engineer (Civil). It is not disputed that the applicant is senior to Mr. Gajender Sharma, i.e., 3<sup>rd</sup> respondent and junior to Mr. Anil Kumar Jain.

11. The applicant has procured the Minutes of the DPC by filing an application under Right to Information Act, 2005. A perusal of the same discloses that the DPC met on 13.10.2017 and it found 4 Executive Engineers (Civil) to be eligible for consideration. They are; Mr. Anil Kumar Jain, Mr. Ashok Kumar Mishra, Mr. Inderjit Singh Sehgal (applicant) and Mr. Gajender Sharma (respondent No.3 in the 2<sup>nd</sup> O.A.). Not only the ACRs of these 4 candidates were evaluated but also the gradings, vigilance status, etc. were obtained. In case of Mr. Anil Kumar Mishra, it was found that the assessment for the year 2012-13 was not up to the mark and he has been given the grading as 'average' with regard to "management, organization and activities, capacity to take decisions and willingness to take responsibility". As such, the DPC found him unfit for promotion.

12. As regards the case of applicant, the DPC assessed as under:-

“In case of Shri IJS Sehgal, (S. No.10 in the inter-se-seniority), DPC has deferred his case for the time being as to have a review of his overall performance.”

13. From this, it becomes clear that there was no finding to the effect that the applicant is unfit. The only reason mentioned is that they intend to review his overall performance. It is too vague and general, a factor, to deny promotion to an Engineer, who is otherwise found fit. The DPC was supposed to measure the overall performance of the candidates with the same yardstick. Had this been done, things would have been different altogether. However, the applicant's case was segregated in this context, which cannot be countenanced in law.

14. We certainly could have interfered with the entire exercise, but for the fact that the applicant himself prayed for a direction to convene a review DPC. The respondents are also in the process of convening review DPC to consider cases of all the Executive Engineers, who were excluded from consideration for want of verification of their certificates.

15. We, therefore, allow O.A. No.3685/2017 in part, directing that the case of the applicant shall be considered by the review DPC for promotion to the post of Superintending Engineer duly taking into account, the fact that the regular DPC did not find anything adverse against him. On promotion to the post of Superintending Engineer (Civil), the applicant

shall be entitled to have his own seniority. This exercise shall be completed by the respondent - DSIIDC within three months from the date of receipt of a copy of this order.

There shall be no order as to costs.

**( Pradeep Kumar )**  
**Member (A)**

**( Justice L. Narasimha Reddy )**  
**Chairman**

**August 24, 2018**  
/sunil/