

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

O.A.No.4168/2011

Reserved on 26th April 2018

Pronounced on 23rd May 2018

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

Shri R C Meena s/o Shri Ram Jivan
Aged about 45 years
r/o E-3, MCD Flats, Bhamasha Market
Kamla Nagar, Delhi – 110 007

..Applicant

(Mr. Rajeev Sharma, Advocate)

Versus

1. South Delhi Municipal Corporation
Through its Commissioner, 9th Floor
Dr. S P Mukherjee Civic Centre
J L Marg, New Delhi
2. The Commissioner
South Delhi Municipal Corporation
Dr. S P Mukherjee Civic Centre, 9th Floor
J L Marg, New Delhi
3. The Commissioner
North Delhi Municipal Corporation
Dr. S P Mukherjee Civic Centre, 9th Floor
J L Marg, New Delhi
4. Director (Personnel)
South Delhi Municipal Corporation
Dr. S P Mukherjee Civic Centre, 22nd Floor
J L Marg, New Delhi
5. Director (Vigilance)
South Delhi Municipal Corporation
Dr. S P Mukherjee Civic Centre, 26th Floor
J L Marg, New Delhi

..Respondents

(Mr. R K Jain, Advocate)

O R D E R

Mr. K.N. Shrivastava:

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“(a) to quash the order dated 08.09.2008 as illegal and unconstitutional;

(b) to issue order to the respondents to convene review DPC in respect of the DPC on the basis of which order has been issued on 08.09.2008;

(c) to issue order to the respondents to prepare a separate zone of consideration of the eligible Schedule Tribe Officers in accordance with the available vacancies and review DPC may be convened for the consideration of the eligible officers.”

2. Factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant was appointed as a Junior Engineer (Civil) on 18.09.1989 in the erstwhile Municipal Corporation of Delhi (MCD). He was assigned current duty charge (CDC) of the post of Assistant Engineer (Civil) on 13.07.1995 and was regularized against the said post on 15.05.1998. His next promotional post is that of an Executive Engineer (Civil), for which a residency period of 5 years in the Assistant Engineer cadre is required.

2.2 The applicant, along with some others, had approached Hon'ble High Court of Delhi in W.P. No.5985/2002, which was disposed of vide order dated 28.04.2004 with a direction to MCD to count the services of the petitioners therein on CDC for determining their eligibility for promotion to

the next higher post, i.e., Executive Engineer (Civil). He claims that he acquired eligibility for becoming Executive Engineer on 13.07.2000 itself taking into consideration his period of working as Assistant Engineer (Civil) on CDC. It is stated that the respondents, vide order dated 29.10.2004, have issued a final seniority list of Assistant Engineer (Civil) as on 15.02.2005 wherein the applicant's name is shown at Sl. No.111 and seniority No.431.

2.3 After 11 years, Departmental Promotion Committee (DPC) was convened in the year 2008 (15th, 16th, 17th, 18th, 25th, 28th July & 4th August 2008) in Union Public Service Commission (UPSC). The vacancies, which had accrued during the years 1997-98 to 2007-08, were considered by the DPC for promotion to the grade of Executive Engineer (Civil) (Annexure A-1 (colly.)).

2.4 It is noticed that there were 5 vacancies for Scheduled Tribe (ST) candidates, one each in the years 1997-98, 1998-99, 2000-01, 2006-07 & 2007-08. It is further noticed that only one Mr. Swaroop Lal Meena, an ST candidate, was considered by the DPC against all these 5 vacancies. Pertinent to mention that Mr. Swaroop Lal Meena was compulsory retired on 27.04.2007 and in spite of that, the DPC considered him even for the vacancies of the years 2006-07 & 2007-08. Other candidates, including the applicant, were not considered, as they did not come under the zone of consideration.

2.5 One Mr. N C Meena had filed O.A. No.2605/2009 before this Tribunal challenging the MCD's office order dated 08.09.2008, which was issued in compliance of judgment of Hon'ble High Court of Delhi in C.P. No.489/2007 in W.P. (C) No.12134/2006 titled **Anil Tyagi v. M.C.D. & others**. Mr. N C Meena had also challenged the recommendations of UPSC vide letter dated 22.08.2008 recommending grant of officiating promotion to the post of Executive Engineer (Civil) to the Assistant Engineers (Civil) of MCD, in respect of which the DPC, referred to in paragraph 2.3 above, was held. The Tribunal, vide order dated 28.09.2010 (Annexure A-2) in paragraph 17 thereof, has observed that the Hon'ble High Court of Delhi in W.P. (C) No.356/2008 (**Union of India & others v. Shri Gopal Meena & others**) has held that there has to be an entirely separate zone of consideration for SC/ST candidates. Accordingly, in paragraph 19 of the order, the Tribunal had issued the following directions:-

“19. In this view of the matter, the interests of justice would be met if the present OA is disposed of by directing the respondents to reconsider the case of the applicant as per rules in the light of the order of the Hon'ble High Court of Delhi in the above WP for a separate zone of consideration for ST, and by constituting a review DPC taking into consideration all the facts. This may be done within a period of two months from the date of receipt of a copy of this order and the results of the review DPC should be communicated to the applicant. Ordered accordingly.”

2.6 It is pertinent to note that in the DPC held in July – August, 2008, the Assistant Engineers up to seniority No. 320 only were considered for officiating promotion to the post of Executive Engineer (Civil) due to the restriction of zone of consideration. The applicant, being at seniority No.458 in the seniority list, could not be considered by the DPC for this reason. Another limiting factor was that in compliance of the judgment of

Hon'ble High Court of Delhi in **Anil Tyagi v. M.C.D.** (supra), the Assistant Engineers (Civil) up to the year 1990 were to be considered for promotion to the post of Executive Engineer (Civil) and their seniority number ended at seniority No.320 in the common seniority list of Assistant Engineers (Civil).

2.7 In the year 2004, the seniority list of Assistant Engineer (Civil) was circulated by the MCD, which was quashed by this Tribunal, vide order dated 24.11.2014 in T.A. Nos.327/2009, 395/2009 & 243/2009 *titled Sandeep Malhotra, Ramesh Kumar & Jagdish Prasad v. North DMC* respectively. The relevant portion of the Tribunal's order is extracted below:-

“15... Therefore, we have no option but to quash the seniority list circulated by the respondent dated 15.02.2005. Accordingly, we quash the seniority list dated 15.02.2005 with the direction to respondents to revise the seniority list of AE (Civil) promoted on 30.12.1997 and 15.05.1998 under promotion quota and appointed against direct recruitment quota on the basis of advertisement issued on 05.11.1997 and result dated 03.05.1998 by correctly applying the quota-rota rule and on the basis of their having been appointed simultaneously against vacancies of the same recruitment year. Further, all promotions to higher post such as Executive Engineer would only on the basis of revised seniority list drawn as per this order. For reasons explained in paragraph 12 and 13 above, para 5 (h) of DoP&T OM dated 03.04.2014 is also quashed. There shall be no order as to costs.”

2.8 Another seniority list of Assistant Engineer (Civil) was prepared on 18.07.2011, which was quashed by the Tribunal vide order dated 30.04.2014 in O.A. No.1276/2012 *titled Ajay Kumar Agarwal & another v. Director, Local Bodies & others.*

2.9 In compliance of the judgment of Hon'ble High Court of Delhi in W.P. (C) No.5356/2014 dated 19.12.2014 titled **K.C. Meena v. Commissioner, North DMC & others**, a review DPC for the DPC held in July – August, 2008 was held in UPSC on 17/18.09.2015. This review DPC was held in accordance with the Department of Personnel & Training (DoPT) O.M. dated 10.04.1989. Paragraph 18.3 of the said O.M. is extracted below:-

“18.3 A review DPC is required to consider the case again only with reference to the technical or factual mistakes that took place earlier and it should neither change the grading of an officer without any valid reason (which should be recorded) nor change the zone of consideration nor take into account any increase in number of vacancies which might have been occurred subsequently.”

2.10 8 carried forward un-filled vacancies (5 UR + 2 SC + 1 ST) from the year 1997-98, 14 (7 UR + 4 SC + 3 ST) from the year 2002-03 and 12 (5 UR + 4 SC + 3 ST) from the year 2003-04 were considered. Here again, the 1999 seniority list published on 15.02.1999 (Annexure A-2 (colly.)) was considered up to seniority No.320. Consequently, the applicant could not be considered in this review DPC also. The number of officers promoted category-wise are given in the table at page 190 of the paper book.

2.11 After complying with all the judicial orders, judgments and directions, the North DMC (respondent No.3) prepared a revised final seniority of Assistant Engineer (Civil) appointed / promoted in 1991 and onwards in MCD in the pay scale of ₹6500-10500 (pre-revised) and published on 10.03.2016 (pp.172 – 183).

2.12 The applicant's contention is that the promotion order dated 08.09.2009, by virtue of which some Assistant Engineer (Civil) of MCD were promoted to the grade of Executive Engineer (Civil), was illegal and unconstitutional. He further contends that separate zone of consideration ought to have been prepared for SC/ST candidates and since that was not done when the DPC met in July – August, 2008, a review DPC for the DPC held in the year 2008 should be convened and his case may be considered for promotion.

As these contentions of the applicant have not been considered by the respondents, he has approached this Tribunal in the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The main contesting respondent, i.e., North DMC (respondent No.3), in its reply, has, *inter alia*, stated that the name of the applicant would also be sent to the UPSC for review DPC to the post of Executive Engineer (Civil) if he falls in the zone of consideration or in the extended zone of consideration.

4. Respondent No.3 has also filed an additional affidavit on 12.10.2015. In paragraph 3 of it, it is stated that during the service career of the applicant, as many as 10 RDAs / police cases were initiated against him; details of which are given in the table contained in it. It is also stated that the CBI had registered 2 cases against the applicant in respect of which prosecution has been granted on 12.10.2007 and 04.01.2008. The table

would also indicate that in some of the RDA cases, the applicant was exonerated but in some cases, he was punished.

5. The applicant, in his rejoinder to the additional affidavit dated 12.10.2015, in reply to paragraph 3 thereof, has stated that he has been exonerated in most of the RDAs and in some of the RDAs, where he was punished, currency of punishment periods is over.

6. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 26.04.2018. Arguments of Mr. Rajeev Sharma, learned counsel for applicant and that of Mr. R K Jain, learned counsel for respondents were heard.

7. Mr. Rajeev Sharma, learned counsel for applicant reiterated the averments made in the O.A. The thrust of his arguments was that the applicant was unfairly denied consideration for promotion to the post of Executive Engineer (Civil) in the DPC held in the year 2008 despite the fact that there were 5 vacancies available for ST candidates and only one candidate, namely, Mr. Swaroop Lal Meena (ST) was recommended against these vacancies.

8. The next argument of Mr. Sharma was that the MCD failed to prepare extended zone of consideration, which was the mandatory requirement in the context of SC/ST candidates. He thus argued that had the DPC prepared the extended zone of consideration, the applicant could have figured in the extended zone of consideration and thus could have been considered for promotion by the DPC.

9. *Per contra*, Mr. R K Jain, learned counsel for respondents argued that the DPC, in its meeting held in July – August, 2008, had considered the seniority list of Assistant Engineer (Civil) of the year 1999 and the zone of consideration ended at seniority No.320, and hence the applicant could not be considered then. He further stated that a revised seniority list was published in the year 2016 and with reference to it and a proposal for review DPC is going to be sent to UPSC. He further stated that the applicant's name would also be included in the zone of consideration / extended zoned of consideration.

10. We have considered the arguments of learned counsel for the parties and have perused the pleadings.

11. It is unfortunate that the respondents are not conducting the DPC meetings at regular intervals. As is evident from the records, the DPC for the vacancies year 1997-98 to 2007-08 was held in July – August, 2008 after a gap of 11 years. Obviously, several Assistant Engineers (Civil) aspiring for promotion would have been adversely affected due to this delay. Be that as it may, the DPC, in its meeting held in July – August, 2008 was obliged to restrict its consideration to the candidates figuring in the zone of consideration. This zone ended at seniority No.320. The applicant, being at seniority No.458, could not have been accorded consideration by the DPC at that time.

12. The extended zone of consideration for SC/ST candidates was mandated in the judgment of Hon'ble High Court in **Union of India & others v. Shri Gopal Meena & others** (supra). Although a review DPC

was held on 17/18.09.2015, but it was in compliance of order dated 19.12.2014 passed by the Hon'ble High Court in W.P. (C) No.5356/2014. Here again the candidates, figuring up to the seniority No.320 in the seniority list, were to be considered for the vacancies years 1997-98 to 2007-08.

13. The respondent No.3, in its reply and additional affidavit, has clearly stated that a proposal for convening review DPC is going to be sent to the UPSC and in the zone of consideration / extended zone of consideration for the review DPC, the name of the applicant is going to be included. In the meanwhile, the revised final seniority list of Assistant Engineer (Civil) has also been prepared and published by the respondents on 10.03.2016 (pp.172 – 183).

14. The relief claimed at paragraph 8 (a) of the O.A. by the applicant seeking quashment of order dated 08.09.2008 cannot be granted for the reason that this order has been issued on the basis of the recommendations of the DPC held in July – August, 2008 and such recommendations were based on the then existing guidelines/instructions/O.Ms.

15. As regards reliefs at paragraph 8 (b) & (c) of the O.A., respondent No.3 (North DMC) in its reply and additional affidavit dated 12.10.2015 has stated that it is going to send a proposal to UPSC for convening review DPC and the applicant's name is going to be included in the zone of consideration / extended zone of consideration. While saying so, obviously, respondent No.3 has taken into consideration that there is no RDA pending against the applicant.

16. In the conspectus of the observations made in the previous paragraphs, we reject the relief 8 (a). Further, since the respondents are already in the process of granting reliefs 8 (b) & (c), we feel that no direction in this regard is required to be issued.

17. In terms of these observations, the O.A. stands disposed of. There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Chairman

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