

**Central Administrative Tribunal
Principal Bench
New Delhi**

**RA No.268/2016
in
TA No.754/2009**

This the 30th day of January, 2019

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

1. Shri Man Chand (Employee Code No.144808)
(Ex Junior Engineer) S/o Shri Harkesh Singh,
R/o B-1284, shastri Nagar,
Near Sarai Rohilla, Delhi-110052.
2. Shri J. S. Jendu (Employee code No.108961)
(Ex Junior engineer) S/o Shri Rakha Ram,
R/o B-716, DDA MIG Flat,
East of Loni Road, Shahdara,
Delhi-110093.
3. Shri Jagjit Singh (Employee Code No.105842)
(Ex Junior Engineer) S/o Shri Teja Singh,
R/o WX/B-44A, Krishna Park Extension,
Tilak Nagar, Delhi-110018.
4. Shri Mehar Chand (Employee Code No.109068)
(Ex Junior Engineer) S/o Shri Ram Richhpal,
R/o Flat No.91/4, Top Floor, Gali No.4,
Krishan Nagar, Safdarjung Enclave,
New Delhi-110029. ... Applicants

(By Ms. Rashmi Chopra, Advocate)

Versus

New Delhi Municipal Council
through its Chairperson,
Palika Kendra, Parliament Street,
New Delhi-110001. ... Respondent

(By Mr. Vaibhav Agnihotri, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

By every standard, this should be the last leg in the litigation that had alternated between the Delhi High Court and the Tribunal in more than two sets.

2. The applicants joined the service of the New Delhi Municipal Council (NDMC), the respondent herein, in various capacities. Over the period, they have been promoted to the post of Junior Engineer (JE) (Electrical). The next promotion from that post is to the post of Superintendent (Tech), and further promotion to that of Assistant Engineer. In the context of promotion to the post of Supdt. (Tech), promotion to the extent of 75% was reserved for JEs who hold graduation degree in Engineering or equivalent. Remaining 25% was earmarked for JEs who did not hold the qualifications stipulated for direct recruitment for that post. The applicants fall into the second category.

3. The applicants filed WP(C) Nos.16364-69/2004 before the Delhi High court, complaining that they were not promoted to the post of Supdt. (Tech) in the vacancies earmarked for them. At that time, NDMC was not within the

purview of the Central Administrative Tribunal. It appears that during the pendency of the writ petition, a notification was issued bringing it within the purview of the Tribunal. The writ petition was transferred to the Tribunal and was re-numbered as TA No.754/2009.

4. The respondents pleaded that through an office order dated 22.04.2002, the post of Supdt. (Tech) was done away with, and was merged with the post of JE. It was also stated that the consequential amendments regarding promotion to the post of AE were approved only in the year 2008. According to them, the applicants could not have been considered for vacancies under the quota for unqualified JEs with reference to the earlier years, since the promotion is roster-based and not vacancy-based.

5. TA No.754/2009 was disposed of on 14.02.2012. RA No.140/2012 was also filed. The result thereof was that a direction was given to the respondent to consider the case of the applicants against the vacancies of Supdt. (Tech) of various years.

6. The respondent filed WP (C) No.7021/2013 before the Delhi High court. The writ petition was allowed on

30.01.2015, and the orders passed in the TA and RA were set aside. However, a direction was issued to the effect that the claim of the applicants for promotion to the post of AEs shall be dealt with independently, and accordingly, the matter was remanded. On such remand, the Tribunal dismissed the TA through judgment dated 22.08.2016. The present review application is filed seeking review of the said judgment. It is pleaded that even if the post of Supdt. (Tech) did not exist, and the cases of the applicants were not required to be considered against that post, they were entitled to be considered for promotion to the post of AE.

7. We heard Ms. Rashmi Chopra, learned counsel for the applicants, and Mr. Vaibhav Agnihotri, learned counsel for the respondents, in detail.

8. The short question that arises for consideration is as to whether the applicants were entitled to be promoted to the post of AE, and whether the Tribunal failed to examine that aspect, as required by the Delhi High court.

9. Without standing on the limitations or technicalities, we examined the issue in detail, as though it is

being considered for the first time. The following aspects emerge as a result of such consideration:

- (a) The applicants did not hold the qualifications for appointment to the post of JE (Elec.) by way of direct recruitment.
- (b) They were entitled to be considered for promotion to the post of Supdt. (Tech) when it was in existence, to the extent of 25% of the vacancies.
- (c) The post of Supdt. (Tech) stood abolished and merged with the post of JE in the year 2002, and there was no basis for the claim of the applicants to be considered for promotion to the post of Supdt. (Tech). In addition to that, the Delhi High court has set aside the direction issued in this behalf, by the Tribunal.
- (d) The recruitment rules for the post of AE were finalised only in the year 2008, and by that time, all the applicants stood retired from service.
- (e) Only *ad hoc* promotions or current duty charge arrangements were made between 2002 and 2008 to the post of AE, and the plea of the respondent that

the applicants were not in the reckoning, be it on account of their places in the seniority list for the post of JE, or the qualifications held by them, stands un rebutted.

10. We, therefore, do not find any merit in the RA. It is accordingly dismissed.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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