

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA No. 3077/2018
M.A. No. 1382/2019**

New Delhi, this the 24th day of May, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Anil Tyagi,
Superintending Engineer, Group-A,
Age 54 years,
S/o Shri B.K. Tyagi,
R/o 61, Engineer Estate,
21, I.P. Extension, Patparganj,
Delhi.

.. Applicant

(By Advocate: Shri Rajeev Sharma)

Versus

1. The Commissioner
North Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre,
4th Floor, 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 Union Public Service Commission,
Through its Secretary,
Dhoulpur House, Shahjahan Road,
New Delhi.

.. Respondents

(By Advocate : Shri R.K. Jain for R-1 and
Shri Naresh Kaushik for R-3,
None for R-2)

ORDER (ORAL)

Justice L. Narasimha Reddy:

It is rather unfortunate that officers who lack basic idea about legal proceedings handled important positions in the North Delhi Municipal Corporation (for short, NDMC). The views expressed and the decisions taken at various levels in the Corporations would shock any person, who is acquainted with the basic principles of law.

2. The applicant was working as Assistant Engineer in the Corporation. He was tried and a criminal case, bearing No. 1839/SIO(P)/Vig./CBI/2005 was registered against him alleging certain offences. During the pendency of the criminal case, he became due for promotion to the post of Executive Engineer (EE). The DPC considered his case and adopted the sealed cover procedure. The criminal case ended in acquittal, through judgment dated 10.08.2017 rendered by the concerned Criminal Court. Taking note of the same, the Appointing Authority passed an order dated 05.09.2017 directing the opening of the sealed cover. On finding that the DPC found the applicant as fit, they have promoted him as EE. He was also accorded seniority and placed in the seniority list at S.No. 93-A, below the name of Shri Rakesh Kumar Aillawadi. Thereafter, the applicant was promoted

to the post of Superintending Engineer (SE) through order dated 12.09.2017.

3. The applicant made a representation with a request to convene review DPC for regular promotion to the post of SE. It was stated that the DPC for promotion to the post of SE met on 16.12.2015 and his case was not considered on account of pendency of the criminal case and in view of the acquittal in the criminal case and promotion as EE, he is entitled to be considered by review DPC. Since his request was not acceded to, he filed this O.A. with a prayer to direct the respondents to convene a review DPC vis-a-vis the regular DPC convened on 16.12.2015.

4. The O.A. is opposed mainly by Municipal Corporation, Respondent No. 1. It is admitted that the sealed cover procedure was adopted in respect of the applicant in respect of his promotion to the post of EE and once he was acquitted, the sealed cover was opened. The fact that the applicant was promoted to the post of SE on ad-hoc basis, is also accepted. As regards the regular promotion to the post of SE, it is stated that the acquittal of the applicant was on technical grounds and after obtaining legal opinion and taking into consideration other relevant factors, it was decided not to accede to his request.

5. We heard Shri Rajeev Sharma, learned counsel for the applicant and Shri R.K. Jain, learned counsel for respondent No.1 – NDMC and Shri Naresh Kaushik, learned counsel for respondent No.3 – UPSC.

6. The basic facts are not in dispute and they are borne out by record. The sealed cover procedure was adopted in respect of the applicant in the context of promotion to the post of EE, due to pendency of the criminal case. An order was passed on 05.09.2017 by the Appointing Authority, after he was acquitted by the Criminal Court. It reads as under:-

“Consequent upon dropped the Criminal proceedings in the Hon’ble Court of Spl. Judge (PC Act) CBI, Delhi vide its judgment dated 10.08.2017 as communicated by the Vigilance Department, North DMC JLO(VCR)/Vig./2017/1605 dated 01.09.2017, in accordance with the recommendations of the Review DPC of Original DPC-2008 and under the provisions of DoP&T O.M. dated 14.09.1992 & 19.01.2017, Sh. Anil Tyagi S/o Sh. B.K. Tyagi, AE(C), on regular basis Sty. No. 199, presently working as Executive Engineer (Civil) on ad hoc basis is hereby granted regular promotion to the post of Executive Engineer (Civil) w.e.f. 08.09.2008, notionally (i.e. the date of issuance of actual promotion order when his junior was promoted), which was notified vide CED’s Office Order No. F.8(8)/CED(NDMC)/Rev.2008/2015/3522 dated 15.10.2015.

Further, consequent upon his regular promotion as Executive Engineer (Civil), his name is hereby inserted at Sty. No. 93-A i.e. below the name of Sh. Rakesh Kumar Aillawadi S/o Sh. K.C. Aillawadi and above the name of Sh. Naveen Kumar Verma in the Revised Final Seniority List of Executive Engineer (Civil) circulated vide circular dated 06.11.2015.

This issue with the approval of Competent Authority.”

7. Not only the applicant was extended the benefit of regular promotion to the post of EE, but also was assigned proper place in the seniority, above his immediate junior. The DPC for promotion to the post of SE was convened on 16.12.2015 and all the EEs, who were promoted on the basis of recommendation of the DPC, which met on 08.09.2008, were considered for promotion and such of them, who were found fit, were promoted on regular basis. The case of the applicant was not considered because the sealed cover adopted for promotion to the post of EE was not opened at that time. After it was opened, the matter was put up before the then Commissioner, to consider the case for convening a review DPC. His observations are extracted in para – 11 of the counter affidavit and they make an interesting reading:-

“Criminal proceedings against Sh. Tyagi have been dropped on technical grounds and not on merit. It needs to be ascertained if the FIR registered against him has been quashed or not. Since CBI is a party in the case, advice of CBI may be obtained before proceeding further in the matter.”

8. It is rather unfortunate that the Commissioner, who invariably was a senior IAS officer, expected the Criminal Court to quash the FIR. One does not expect him to be a legal expert, but at least when he wanted to mention something which is purely in the realm of law, he was required to acquaint himself with the basics thereof. The question of the Criminal Court quashing the FIR does not arise. Almost competing with the officer who made the said

observation, the Law Officer (Vigilance) proved his superiority in the ignorance. He observed as under:-

- “(i) The criminal proceedings against Shri Anil Tyagi have been dropped on technical ground i.e. for invalid sanction for want of due non-application of mind by the Competent Authority i.e. Commissioner of erstwhile MCD vide judgement dated 18.08.2017 passed by Hon’ble Court of Shri Pulastya Pramchala, Spl. Judge (PC Act), CBI, Delhi.
- (ii) The Hon’ble Court has not quashed the FIR but dropped the criminal proceedings against Shri Anil Tyagi.
- (iii) A letter No.1839/SIO(P)/Vig./CBI/2005/192 dated 07.02.2018 has been written to Supdt. Police/CBI/AC Branch for seeking advice in connection with the regular promotion of Shri Anil Tyagi to the post of Supdtg. Engineer.”

His legal acumen is so high that not only he too subscribed to the view that an FIR can be quashed by a criminal court that tried the case, but also the views of the prosecuting agency become relevant in the context of promotions. One is only to wonder as to how many in the field have emulated these noble principles.

9. The curious part of the matter is that none of the observations made by the Commissioner and of the Law Officer came in the way of opening the sealed cover and extending the benefit of regular promotion. It is just understandable as to how a different situation came into existence for convening a review DPC for the subsequent promotion.

10. It is rather unfortunate that the Municipal Corporation, which administers part of the Capital of the country, is having officers of such an approach and knowledge. The result is that the ignorance of such officers became ultimate basis for the decision to refuse to convene a review DPC in respect of the applicant. We disapprove the approach of the Respondent No. 1 in the matter.

11. Accordingly, the O.A. is allowed and the Respondent No. 1 is directed to forward necessary proposal, complete in all respects, to UPSC - Respondent No.3 within four weeks from the date of receipt of certified copy of this order with a request to convene a review DPC. The Respondent No. 3 shall, in turn, take necessary steps within six weeks from the date of receipt of certified copy of this order. Pending MA, if any, also stands disposed of. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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