

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 4561/2018

New Delhi, this the 14th day of December, 2018

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

1. Shri Vijay Prakash
S/o Shri Jagbir Singh
Aged about 57 years
R/O E-89, Tagore Lane,
Minto Road, New Delhi - 110002

(Working as Engineer in Chief, NDMC)

... Applicant

(By Advocate: Mr. Ajesh Luthra with Mr. S. M. Arif and Mr. Akshay Chaudhary)

V E R S U S

1. The Director,
Local Bodies, Govt of NCT of Delhi
Players Building,
I.T.O. New Delhi – 110002.
2. The Commissioner
North MCD,
4th Floor, Civic Centre, Minto Road,
New Delhi – 110002.
3. The Commissioner,
East MCD,
Ist Floor, Plot No. 419
Udyog Sadan, Patpar Ganj,
Industrial Area,
Delhi – 110092.
4. Shri K. P. Singh
S/o Shri Om Prakash

Aged about 51 years
R/o 58, Goodwill Apartment,
Sector 13, Rohini, Delhi.

(Working as Director in Chief, EDMC)

...Respondents

(By Advocate: Mr. R. V. Sinha with Mr. Amit Sinha (For R-2), Ms. Harvinder Oberoi with Mr. Amit Yadav (for R-1) and Mr. Milind P. Singh with Mr. Rahul Mahod (R-4))

O R D E R (O R A L)

Justice L. Narasimha Reddy, Chairman:

This OA is filed challenging the order dated 12.12.2018 issued by the Director of Local Bodies, the first respondent herein, revoking an earlier order dated 02.09.2016 passed by him. The relevant facts are as under:-

2. The applicant was working as Engineer-in-Chief, in East Delhi Municipal Corporation (EDMC). The 4th respondent was holding that post in the North Delhi Municipal Corporation (NDMC). Through an order dated 02.09.2016 the 1st respondent transferred them to the places of each other. The said order was challenged by the 4th respondent by filing OA 721/2017. The same was disposed on 12.09.2018 directing that it shall be open to the 4th respondent to make representation to the 1st respondent and the latter in turn, shall pass appropriate orders within a period of three weeks. The dispute was regards the entitlement of the 4th respondent on the one hand and the applicant on the other to hold the

post of Engineer-in-Chief in the Municipal Corporations, which were constituted in the recent past. Stating to be in compliance with the order of the OA, the impugned order was passed.

3. The applicant contends that the order dated 02.09.2016 was passed strictly in accordance with law, by the 4th respondent and there was absolutely no basis for cancelling the same, that too without giving him an opportunity of being heard.

4. At the stage of admission itself, Mr. Ajesh Luthra, with Mr. S. M. Arif and Mr. Akshay Chaudhary advanced extensive arguments on behalf of the applicant. He submits that the 1st respondent was supposed to hear the applicant here in before passing the impugned order or at least to ascertain the factual position obtaining in the respective Municipal Corporations. He contends that the impugned order has effect of transferring the applicant to EDMC, where no clear vacancy of Engineer-in-Chief exists.

5. The arguments on behalf of the respondents are advanced by Mr. R. V. Sinha with Mr. Amit Sinha (For R-2), Ms. Harvinder Oberoi with Mr. Amit Yadav (for R-1) and Mr. Milind P. Singh with Mr. Rahul Mahod (R-4). They contend that impugned order was passed purely as a measure of

implementation of the order of OA and, by itself, it did not decide the rights of the parties. It is also stated that in case the applicant is of the view that he is entitled to remain in NDMC, it is always open to him to make representation in accordance with the procedure prescribed in the Delhi Municipal Corporation Act.

6. In the recent past, Delhi Municipal Corporation was trifurcated. Earlier, only one post of Engineer-in-Chief existed in the undivided corporation. On trifurcation, one post each in the category of Engineer-in-Chief was created in the three Corporations. Through order dated 02.09.2016 the first respondent transferred the applicant from EDMC to NDMC and the 4th respondent, in the opposite direction. The 4th respondent challenged the order of transfer by filing OA No. 721/2017. We disposed of the OA with the following observations:-

“4. We heard the extensive arguments advanced by Dr. N. Pradeep and Shri Milind P Singh, learned counsel for the applicant, and Shri Amit Yadav, learned counsel for the respondents.

5. If the undisputed facts pertaining to the applicant are analysed with reference to the relevant provisions of law, it becomes clear that the applicant became an employee of the North DMC by operation of Section 90-A (1)(a) of the Act. It is thereafter, that he was promoted to the post of Engineer-in-Chief. The question as to whether the respondent gets any jurisdiction to transfer such employee to another Corporation is not clear. Even from the provisions of the Act, the only power conferred upon the Corporation is to allot the employees of above ward and zonal level, that too,

after framing of relevant rules. As of now the rules have not been framed.

6. we would have certainly gone into further details and adjudication of the matter on merits, but for the fact that neither both the Municipal Corporations involved in the matter, nor the person who was transferred in place of the applicant, have been impleaded.

7. However, since the question is more about the interpretation of provisions of law and examination of the extent of power conferred upon the sole respondent therein, we permit the applicant to make a representation narrating all the relevant facts. If such a representation is made, the respondent herein shall pass appropriate orders within a period of three weeks from the date of receipt of a copy of this order.”

7. The impugned order is passed stating to be in compliance with the order of the OA which reads as under:-

“In pursuance of the directions given by Hon’ble CAT dated 12/09/2018 in OA no.721/2017 namely KP Singh vs. Govt.of NCT of Delhi and in pursuance of the orders of Principal Bench of CAT dated 12.09/2018 the mutual transfer orders No. 1/9/AD/DLBT&P-II/S-12013/PT-1/7/PT-I/7101-7106 dated 02.09/2016 in respect of Shri Vijay Prakash erstwhile Engineering-in-Chief East DMC and Shri KP Singh erstwhile Engineering-in-Chief North DMC are considered bad in procedure and is revoked with immediate effect. Both the officers are directed to report for duties in their erstwhile/ respective Corporations with immediate effect without relieving from their current charges.”

8. Since the applicant was pressing for the interim order, we summoned the file from the office of the 1st respondent. A perusal of the same discloses that the applicant made representation as permitted by this Tribunal in OA 721/2017, by raising several grounds.

9. On consideration of the same, the 1st respondent found two deficiencies in the order dated 02.09.2016; the first is that wherever inter corporation transfer was to take place, the issue was required to be considered at the Joint Meeting of the Chief Executives of the respective corporations, but in the present case, no such meeting was held. The second is that even where the joint meeting was conducted the result of the discussion was to be placed before the Chief Secretary of the State for approval, but such was not taken before the order dated 02.09.2016 was passed.

10. Any order which is passed in contravention of the procedure cannot create any rights. The matter is governed by provisions of the Act and the substantive question, such as the entitlement of the applicant and the 4th respondent and the other officers to remain in the respective Corporations, can be decided only by following the prescribed procedure.

11. Having regard to the position held by applicant and the 4th respondent, the issue was required to be examined by the 1st respondent. It is only after the highest authority accorded its approval that the result would have ensued. Admittedly, neither the meeting was conducted nor the approval of the Chief Secretary was taken.

12. We, therefore, dismiss the OA, however by leaving it open to applicant to submit a representation to 1st respondent, ventilating his grievance and claiming his rights in terms of the provisions of the Delhi Municipal Corporation Act. As and when the same is filed, the 1st respondent shall pass appropriate orders, by giving notice to the affected parties.

13. The applicant contends that there is no clear vacancy in the EDMC as of now. If that is so, he can bring it to the notice of concerned Corporation as well the 1st respondent, who, in turn, shall resolve the same within a period of one week from today. Even if there exist any impediments for the applicant to function as Engineer-in-Chief in the EDMC, he shall be entitled to draw the same emoluments and the same position as Engineer-in-Chief, without any reduction or adverse affect. There shall be no order as to costs.

(Aradhana Johri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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