

**Central Administrative Tribunal
Principal Bench**

OA No.1076/2017

New Delhi, this the 30th day of September, 2019

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

1. Sh. Syed Abdul Awal (Aged 49 years)
Group 'A', S/o S.M. Rahman
R/o H-4/58, Sector-16, Rohini
Delhi-110085.
(Presently working as Asstt. Executive Engineer
(Civil) in the D.S.I.I.D.C. Ltd.)
2. Sh. Tarif Shafi (Aged 44+ years)
Group 'A', S/o (Late) Sh. Mohd. Shafi
R/o 536/6, Zakir Nagar, Okhla
Delhi-110025
(Presently working as Asstt. Executive Engineer
(Civil) in the D.S.I.I.D.C. Ltd.)
3. Sh. Sunil Dutt Sharma (Aged 47 ½ years)
Group 'A', S/o Sh. H.S. Sharma
R/o GD-121, Pitam Pura, Delhi-110034.
(Presently working as Asstt. Executive Engineer
(Civil) in the D.S.I.I.D.C. Ltd.)
4. Sh. Suresh Kumar (Aged 43 years)
Group 'A', S/o Sh. Mam Chand
R/o H.No.416, Chirag Dilli,
New Delhi-110017
(Presently working as Asstt. Executive Engineer
(Civil) in the D.S.I.I.D.C. Ltd.) ...Applicants

(By Advocate: Shri R.A. Sharma)

Vs.

1. Delhi State Industrial & Infrastructure
Development Corporation Ltd.(DSIIDC Ltd.)
Through its Chairman-cum-Managing
Director, N-36, Bombay Life Building

Connaught Circus
New Delhi-110001.

2. Chief Manager (Personnel)
D.S.I.I.D.C. Ltd.
N-36, Bombay Life Building
Connaught Circus
New Delhi-110001. ...Respondents

(By Advocates: Shri P.N. Mishra, Sr. Advocate, assisted
by Sh. Jitendra Kumar Sahoo)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicants were appointed as Junior Engineers(Civil) in the first respondent organization between 1995 to 2000. They were promoted as Executive Engineer(Civil), on ad hoc basis, through orders dated 28.03.2005(Applicant Nos. 1-3) and 12.10.2006 (Applicant No.4). Through an order dated 14.09.2012, all of them were promoted to the post of Project Director, i.e., equivalent to Assistant Executive Engineer, on regular basis. The respondents issued an advertisement, inviting applications for appointment to the post of Executive Engineer(E.E.), on deputation basis, in the year 2016.

2. This OA is filed challenging the action of the respondents in issuing the recruitment notice issued in

November, 2016 and for a direction to the respondents to hold DPC, to consider the cases of the applicants, for promotion to the post of EE. It is also prayed that the continuous officiation on the post of AEE(Civil) be reckoned w.e.f. 28.03.2005/12.10.2006, i.e., the day on which they were appointed on ad hoc basis and to promote them to the post of EE(Civil) on that basis. The applicants contend that they were promoted to the post of AEE in the year 2005 and 2006, as the case may be, on the basis of recommendations of a validly constituted DPC and there was absolutely no basis to treat it as on ad hoc basis. It is stated that the issuance of orders in the year 2012, promoting them on regular basis to the post, is virtually superfluous and they are entitled to count their service in the post of AEE(Civil) w.e.f. 2005 onwards. The applicants further contend that the steps taken by the respondents to fill up the post of EE(Civil), through deputation, is totally impermissible in law.

3. The respondents filed a detailed counter affidavit. It is stated that the promotion of the applicants to the post of AEE in the year 2005 was purely on ad hoc

basis. It is stated that at the relevant point of time, the specially empowered committee, constituted by the Hon'ble Supreme Court, was overseeing the matter pertaining to sealing of unauthorized constructions and for that purpose, temporary arrangement, by creating certain posts was made. It is stated that the mere reference to the vacancies, so created, on ad hoc basis, cannot constitute any basis for the applicants to claim rights. The various grounds urged by the applicants in the OA are denied.

4. We heard Shri R.A. Sharma, learned counsel for the applicants and Shri P.N. Mishra, Sr. Advocate assisted by Shri Jitendra Kumar Sahool, counsel for the respondents.

5. In the hierarchy of the first respondent, the post of Junior Engineer occurs almost at the beginning. Promotion from that post is to the post of AEE and thereafter to the post of Executive Engineer. Applicant Nos. 1 to 3 were promoted to the post of AEE w.e.f. 28.03.2005 and applicant No.4 was promoted to the said post w.e.f. 12.10.2006. The order dated 28.03.2005 reads as under:-

"The Managing Director is pleased to promote the following Junior Engineer (Civil) on Adhoc basis as Asstt. Executive Engineer(Civil) in the pay scale of Rs.8,000-13,500 with immediate effect.

1. Sh. Syed Abdul Awaal
2. Sh. Arvind Kumar Gupta
3. Sh. Satish Chandra
4. Sh. Tariq Shafi
5. Sh. Sunil dutt Sharma
6. Sh. Lalit Kumar Bansal
7. Sh. Vijay Pal Singh

The orders of their pay fixation shall be issued separately."

6. This was followed by an order of regular promotion dated 14.09.2012 which reads as under:-

"On the recommendations of the Departmental Promotion Committee dated 12.09.2012, the Chairman-cum-Managing Director is pleased to approve the promotion of the following Junior Engineer (Civil) to the post of Sr. Project Manager (Civil) in the pay scale of Rs.9300-34800 + Rs.5400 (GP) in order of merit with immediate effect:-

S. No./File No.	Name
1/2306	Syed Abdul Awaal
2/2307	Arvind Kumar Gupta
3/2308	Satish Chandra
4/2309	Tariq Shafi
5/2358	Sunil Dutt Sharma
6/2356	Vijay Pal Singh
7/2355	Kuldeep Singh
8/2394	Suresh Kumar
9/2398	Ashwani Kumar Sinha
10/2774	Z.U.Haque (DSMDC)*

* The seniority of Sh. Z.U.Haque shall be in the cadre of DSMDC which has been kept as a separate group in terms of the scheme of amalgamation of DSMDC with DSIIDC.

They will be on probation for a period of two years.

The orders for pay fixation etc. if any, shall be issued separately.”

7. Comparison of both the orders discloses that the latter was made on the basis of the recommendations of the Departmental Promotion Committee which met on 12.09.2012, whereas there is no such reference to the DPC, in the former.

8. The applicants have referred to the Minutes of a committee which met on 23.03.2005. That also was mentioned as the 'Departmental Promotion Committee'. It was headed by the Commissioner of Industries and Managing Director of the first respondent organization. The Minutes thereof do not reflect that it was constituted for the purpose of assessing the eligibility and fitness of the Junior Engineers for promotion to the post of AEE. Para 5 thereof makes it clear and it reads as under:-

“5. The Committee considered the cases of ten officers of the feeder cadre falling in the Zone of Consideration and also the additional

eligible officers on seniority who fulfill the Recruitment Rules, considering the eventuality that posts created by the Empowered Committee which have been allowed to continue for next five years by the Board of Directors in its 202nd meeting held on 29.12.2004 may fall vacant on promotion of the present incumbents, against the regular vacant posts and resultant vacancies.”

9. The posts were created by the Empowered Committee. The possibility of some officers being promoted to a regular post and the contingency of there being some vacancies was taken note of. It is not at all within the purview of regular DPC. It is only when the existing clear vacancies are notified to the DPC, that it would make recommendations of the candidates who are found fit to be promoted within the zone of consideration. Further, the question of the head of the organization, being part of the DPC, does not arise. The reason is that the recommendations made by the DPC are required to be accepted by the Managing Director and he can be part of the DPC. The RRs also do not provide for the inclusion of the Managing Director of the DPC, at any rate. The exercise undertaken by it does not fit into the one contemplated under the Rules.

10. The applicants were supposed to raise the objection when their promotion to the post AEE was mentioned as ad hoc, way back in the year 2005. That the appointments, so made, are against the posts created by the Empowered Committee is also mentioned in the order dated 12.10.2006 issued to the 4th applicant, which reads as under:-

"The Managing Director is pleased to promote the following Junior Engineer (Civil) on Adhoc basis as Asstt. Executive Engineer(Civil) in the pay scale of Rs.8,000-13,500 with immediate effect.

1. Sh. Syed Abdul Awaal
2. Sh. Arvind Kumar Gupta
3. Sh. Satish Chandra
4. Sh. Tariq Shafi
5. Sh. Sunil Dutt Sharma
6. Sh. Lalit Kumar Bansal
7. Sh. Vijay Pal Singh

The orders of their pay fixation shall be issued separately."

11. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **Rudra Kumar Sain** Vs. **Union of India** AIR 2000 SC 2808. Their Lordships made an attempt to find the scope and purport of the various expressions such as ad-hoc, fortuitous, stop-gap. However, it was for the purpose of the case and it was made amply clear that no general proposition, as

such, was being made. In para 19, their Lordship's observed as under:-

"It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an (ad hoc, fortuitous or stop-gap) appointment can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre."

12. In ***Direct Recruit class-II Engineering Officers' Association & Ors. v. State of Maharashtra & Ors.*** AIR 1990 SC 1607, their Lordships were dealing with the relative rights of the promotees on the one hand and direct recruits on the other. While summing up, several contingencies were indicated. None of them get attracted to the facts of the case.

13. It is brought to our notice that during the pendency of the OA, the applicants herein were promoted to the post of Executive Engineer(Civil) through order dated 28.09.2018. With this, substantial relief, claimed in the OA, stands extended to them.

14. We do not find any merit in the OA. It is accordingly dismissed. It is needless to mention that the interim order, passed earlier, shall stand vacated. There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

/vb/