

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

O.A. No.1441/2014

Friday, this the 27<sup>th</sup> day of September 2019

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

Shri R P Kohli, age 57 years (Sup. Engineer)  
s/o late Sh. O S Kohli  
r/o C-225,  
Surajmal Vihar, Delhi – 92

..Applicant

(Mr. Sachin Chauhan, Advocate)

Versus

1. Govt. of NCT of Delhi  
Through the Chief Secretary  
Delhi Secretariat, IP Estate  
New Delhi
2. The Director (Local Bodies)  
Govt. of NCT of Delhi  
Delhi Secretariat, IP Estate  
New Delhi
3. The Commissioner  
North Delhi Municipal Corporation  
Dr. S P Mukherjee Civic Centre, 4<sup>th</sup> Floor  
JL Nehru Marg, New Delhi – 110 002
4. The Commissioner  
East Delhi Municipal Corporation  
419, Udyog Sadan  
Patparganj Industrial Area  
Delhi – 110 092
5. The Commissioner  
South Delhi Municipal Corporation  
Dr. S P Mukherjee Civic Centre, 9<sup>th</sup> Floor  
JL Nehru Marg, New Delhi – 110 002
6. The Additional Commissioner (Eastt.)  
4<sup>th</sup> Floor, Dr. S P Mukherjee Civic Centre

North Delhi Municipal Corporation  
J L Nehru Marg, New Delhi – 110 002

7. The Director (Personnel)  
North Delhi Municipal Corporation  
(Central Establishment Department)  
13<sup>th</sup> Floor, Dr. S P Mukherjee Civic Centre,  
JL Nehru Marg, New Delhi – 110 002

..Respondents

(Mr. R V Sinha, Advocate for respondent Nos.3, 6 & 7,  
Mr. R K Jain, Advocate for respondent No.5 – *Nemo* for  
remaining respondents)

### **O R D E R (ORAL)**

**Justice L. Narasimha Reddy:**

The applicant joined the service of North Delhi Municipal Corporation (North DMC) as Junior Engineer (Civil) on 30.06.1978. He was promoted to the post of Assistant Engineer (Civil) on 25.05.1990. While he was working in that post, criminal proceedings, under Prevention of Corruption Act, 1988 were initiated against him by the CBI. Though his colleagues, including the juniors to him, in the post of Assistant Engineer (Civil) were promoted on *ad hoc* basis to the post of Executive Engineer (Civil) on 27.05.1998, he was not extended the benefit. By the time the regular promotions to the post of Executive Engineer (Civil) were taken up, criminal proceedings were pending against him. Therefore, sealed cover procedure was adopted and his batch mates were promoted to the post of Executive Engineer (Civil) on regular basis. Some of them were

also promoted on *ad hoc* basis to the post of Superintending Engineer (Civil) w.e.f. 12.04.2007.

2. The criminal case against the applicant resulted in acquittal, on 05.06.2012. Thereupon, the sealed cover was opened and the applicant was extended the regular promotion to the post of Executive Engineer (Civil) on 06.12.2012 w.e.f. 08.09.2008. Subsequently, he was promoted to the post of Superintending Engineer (Civil) on *ad hoc* basis on 10.12.2012.

3. The grievance of the applicant is that consequent upon his acquittal in the criminal case and regular promotion to the post of Executive Engineer (Civil), he was entitled to be extended the benefit of *ad hoc* promotion to the post of Superintending Engineer (Civil) with effect from the date, on which his juniors were promoted, namely, 12.04.2007.

4. The applicant contends that, had the benefit of *ad hoc* promotion been extended to him w.e.f. 12.04.2007, he too would have been entitled to get the benefit of Pay Band – 4, as was done in the cases of his juniors. The representation made by him in this regard was rejected by the respondents on 09.10.2013. The same is challenged in this O.A.

5. The respondents filed separate counter affidavits opposing the O.A. It is stated that the *ad hoc* promotion, is not a part of regular exercise in the Department and that it was done



only to meet the immediate needs when the higher post remains vacant. It is stated that though there exists the facility of notional promotion to a higher post as and when the sealed cover is opened and the employee is found fit, such a facility does not exist as regards the *ad hoc* promotions.

6. We heard Mr. Sachin Chauhan, learned counsel for applicant, Mr. R V Sinha, learned counsel for respondent Nos. 3, 6 & 7 and Mr. R K Jain, learned counsel for respondent No.5. There is no representation for respondent Nos. 1, 2 & 4.

7. The progress in the career of the applicant was a bit smooth till he was promoted to the post of Assistant Engineer (Civil). However, he met some roadblocks thereafter, on account of initiation of criminal proceedings. Naturally, the sealed cover procedure had to be adopted when regular promotions were taken up for the post of Executive Engineer (Civil). With the acquittal of the applicant in the criminal case on 05.06.2012, sealed cover was opened and he was promoted on regular basis, through an order dated 06.12.2012 but w.e.f. 08.09.2008, i.e., the date on which his immediate junior, Mr. Ashok Kumar Mittal, was promoted on regular basis. The applicant has no grievance about that.

8. It appears that quite large number of posts of Superintending Engineer remained vacant. Therefore,

temporary arrangements were being made by promoting Executive Engineers on *ad hoc* basis. The junior to the applicant was promoted on *ad hoc* basis on 08.09.2008. The turn of the applicant came only when he was promoted on regular basis to the post of Executive Engineer. He was appointed to the post of Superintending Engineer on *ad hoc* basis, w.e.f. 10.12.2012.

9. It may be true that the North DMC took into account the *ad hoc* service of Executive Engineer in the post of Superintending Engineer, for the purpose of extending the benefit of PB – 4, and that the applicant did not get *ad hoc* promotion for a considerable period, because of initiation of criminal proceedings. The benefit of retrospective promotion is available only as regards the regular promotion and not *ad hoc* promotion. The applicant contends that *ad hoc* promotion also must be extended with retrospective effect.

10. Recently, we dealt with this very question in O.A. No.3527/2014 vide order dated 24.09.2019. In paragraph 8 thereof, it was observed as under:-

“8. The 1<sup>st</sup> part of the claim made by the applicant is for the period between 01.10.2007 and 06.01.2009. This is the period, during which his juniors functioned as DS on *ad hoc* basis. It hardly needs any mention that *ad hoc* promotion cannot be treated as regular or substantive. Neither DPC made any recommendation in that behalf nor any sealed cover procedure was adopted. The regular promotions took place only in the month of January 2009 and, at that time, the sealed cover procedure was adopted

for the applicant. The applicant is not able to show us any provision of law or a binding precedent in respect of his plea that an employee, whose case was overlooked for promotion, is entitled to be extended the benefit of notional promotion, covering the period of ad hoc promotion also. We do not find any merit in the plea of the applicant on this aspect.

The same situation exists in the instant case also.

11. This is not a case, in which the employee, who was overlooked in promotion on account of sealed cover procedure and was promoted at a later stage, is not extended the benefit of *ad hoc* promotion to a higher post even while his juniors are working there. In such cases, direction can be given to extend such benefit to him also. That, however, would be with prospective effect. Extending the benefit of *ad hoc* promotion to an employee with retrospective effect, is totally unknown to the service law.

12. Reliance is placed by the learned counsel for applicant upon the judgment of this Tribunal in O.A. No.1841/2015 decided on 24.09.2015. That was a case in which the employee, who was earlier overlooked for promotion, was extended the benefit of *ad hoc* promotion, but not with retrospective effect.

13. We do not find any merit in this O.A. It is accordingly dismissed. There shall be no order as to costs.

**( Mohd. Jamshed )**  
**Member (A)**

**( Justice L. Narasimha Reddy )**  
**Chairman**

**September 27, 2019**

/sunil/

