



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 602/2014

New Delhi, this the 20th day of November, 2019

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

1. Mohd. Asif,
S/o Mohd. Yusuf,
R/o B-35, Johri Farm,
Okhla,
New Delhi- 110025.
2. Parveen Chaudhary,
S/o Sh. Umrao Singh,
R/o D-79, Mahendru Enclave,
Delhi.

...Applicants

(By Advocate: Mr. MK Bhardwaj)

Versus

1. South Delhi Municipal Corporation,
Through its Commissioner,
9th Floor, Dr. S. P. M. Civic Centre,
Pt. J. L. N. Marg, (Minto Road),
New Delhi – 110002.
2. Engineer – in-Chief,
South Delhi Municipal Corporation,
20th Floor, Dr. S. P. M. Civic Centre,
Pt. J. L. N. Marg, (Minto Road),
New Delhi – 110002.
3. Additional Deputy Commissioner (Engg.),
South Delhi Municipal Corporation,
Dr. S. P. M. Civic Centre,
Pt. J. L. N. Marg, (Minto Road),
New Delhi – 110002.

...Respondents

(By Advocate: Mr. RK Jain)



ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman:-

The 1st applicant was appointed as Junior Engineer (Civil) in the erstwhile Municipal Corporation of Delhi in the year 1993 and the 2nd applicant, in the year 1986. Both of them have been promoted to the post of Assistant Engineer (Civil), on ad hoc basis; in the year 2009 and 2007 respectively. They were issued show cause notices dated 27.05.2011 and 18.07.2012, stating that the ad hoc promotions were made on the premise that they did not face any disciplinary or criminal cases and on being issued vigilance clearance, but at a later stage, it emerged that they figured as accused in a criminal case in FIR No. 82/2002 dated 13.02.2002. The applicants submitted the reply stating that they were not aware of their involvement in the criminal case and that there was no disciplinary case pending against him. It is also stated that when they were sought to be arrested, they obtained bail and thereafter nothing was informed to them. Through an order dated 30.01.2014, the appointing authority reverted the applicants to the post of JE (C). The same is challenged in this OA.



2. The applicants contend that they were not aware of having been implicated in any criminal case and when they were sought to be apprehended, they have obtained bail. It is also stated that the pendency of the criminal case would become a bar only in the context of regular promotions and not to the ad hoc promotions. The applicants further contend that by the time the impugned order was passed, the trial court discharged them through judgment dated 22.06.2013.

3. Though a counter affidavit is said to have been filed on behalf of the respondents, it is not made a part of the record. We heard Mr. M.K. Bhardwaj, learned counsel for the applicant and Mr. RK Jain, learned counsel for the respondents at length.

4. The applicants were promoted to the post of AE (C) on ad hoc basis, in the year 2009 and 2007 respectively. The show cause notices were issued to them on 27.05.2011 and 18.07.2012, alleging that they did not bring to notice of the concerned the factum of their having been shown as accused in the criminal case. It appears that a complaint was received by the Police from M/s Ambuja Cements, that certain persons were indulging in manufacture of spurious cement, of Ambuja Brand and that some JE of the



Corporation were also receiving supplies from such agency. In that behalf, the names of the applicants were also mentioned therein.

5. It is not from the record whether the department was aware of filing of such an FIR or whether there was an occasion of the applicants also to inform the same to the respondents. In their reply to the show cause notice, the applicants tried to plead ignorance about the entire episode. Ultimately the impugned order was passed, reverting the applicants.

6. Two aspects become relevant in this behalf. The first is that the promotion that was granted to the applicants is ad hoc in nature. The question of adopting the sealed cover procedure or getting vigilance clearance does not arise in such cases. Promotions of that nature are made mostly on account of exigency of service. Therefore, the order of ad hoc promotion in respect of the applicants cannot be said to have been vitiated in any manner.

7. Secondly, the applicants were discharged in the criminal case on 22.06.2013. Whatever may have been the circumstances or the legal implications, as long as the applicants continued to be shown as accused in the criminal case, they stood discharged by the time, the



impugned order was passed. It appears that the factum of discharge of the applicants was not brought to the notice of the appointing authority. The applicants have benefit of interim order that enabled them to continue as AE(C) on ad hoc basis.

8. We, therefore, allow the OA and set aside the impugned order. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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