

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) No.7886/2010 & CM No. 20328/2010**

% **Date of Decision: 11.08.2011**

Municipal Corporation of Delhi & Ors. Petitioners

Through Mr. Gaurang Kanth and Ms. Biji,
Advocates

Versus

Surender Singh Respondent

Through Mr. Rajeev Sharma and Mr. Jitender
Gaur, Advocates

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, Municipal Corporation of Delhi, through its Commissioner & Ors., have challenged the impugned order dated 12th May, 2010 passed by Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3678/2009 titled as 'Sh.Surender Singh v. Municipal Corporation of Delhi & Ors.', allowing the original application

of the respondent and directing the petitioners to accord to the respondent the look after charge of the post of Assistant Engineer (Civil) w.e.f. 19th October, 2007 with difference of salary, including the arrears within a period of three months.

2. Brief facts to comprehend the disputes between the parties are that the respondent is a diploma holder engineer and had initially joined Municipal Corporation of Delhi as a Junior Engineer in the year 1993. He had allegedly completed degree in Engineering in the year 2002. Since 1993 the respondent had been working as a Junior Engineer and had been posted at different places.

3. During the period 2005-2006, a reliable information was received that the respondent and Sh. D.S. Dhanda, EE, Sh.A.K.Jain, AE and Sh.S.S.Chikkatra, JE in connivance with Pvt. Contractors committed gross irregularities/violations in connection with the Civil Construction works carried out for improvement of public parks in Sector 15 and 16 of Rohini. PE-DAI-2007-A-2002 was registered by CBI against the respondent and other conniving officials. On 19th October, 2007 an Office Order No.F.5(27)/CED/(III)/94/Pt.VIII/37/30711 was issued by the petitioner assigning the look after charge of the post of Assistant Engineer (Civil) with immediate effect in addition to carrying out the

duties by Junior Engineers. In the order dated 19th October, 2007, it had been clarified that the officials who were given the look after charge would draw the salary in their own pay scale and would not claim any additional pay or undue benefit for holding the additional charge and also that the assignment of the look after charge would not confer on them any right for claiming an ad hoc/regular promotion or seniority of the said post or any other service benefits. It was further specified that the look after charge being a stop gap arrangement could be terminated at any time by the Competent Authority without assigning any reason and/or prior notice and also that the period spent on look after charge was not to be counted as qualifying service for promotion to the higher grade or for seniority. It was also categorically stated that the look after charge would be terminated as and when direct recruits would become available.

4. Since, the name of the respondent was not included in the order dated 19th October, 2007 assigning the look after charge to various Junior Engineers including some of them even junior to the respondent, the respondent challenged the same by filing an original application being OA No.1466 of 2009, titled as 'Surender Singh v. MCD', which was decided on 6th August, 2009. While deciding the OA No.1466/2009, the Tribunal in para 4 had held as under:-

“We have heard both the counsel and perused the pleadings as well. Applicant’s grievance is that till date no charge sheet has been filed in the police case yet he has not been given the look after charge though his juniors have been assigned the next promotional post of Assistant Engineer. This averment has not been denied by the respondents in their counter affidavit. They have themselves stated that applicant’s case is under active consideration for grant of ad hoc promotion, therefore, this OA is disposed off with a direction to the respondents to consider the claim of the applicant for look after charge of ad hoc promotion to the post of Assistant Engineer (Civil) at par with his juniors because till date, admittedly, no charge sheet has been filed in the police case. This should be done within a period of 4 weeks from the date of receipt of a copy of this order under intimation to the applicant.”

5. Before the Tribunal, the respondent had contended that he had been falsely implicated in the criminal case and that he had also made a representation dated 20th October, 2007 against order dated 19th October, 2007 assigning look after charge to other junior engineers and not to him. The respondent had also contended that the petitioners had ignored the report of the vigilance department dated 18th December, 2007, which had given no objection for promotion in respect of the respondent as only preliminary enquiry had been received by the vigilance department against the respondent and no regular case had been registered.

6. The respondent had also made a grievance in respect of order dated 29th May, 2008, whereby Sh.Yogender Singh Sanger s/o Sh.S.S.Sanger was assigned the look after charge inspite of issuance of

chargesheet against him. The respondent also relied on the Office Order dated 28th January, 2009 which was passed in compliance of the High Court's order dated 21st October, 2008 in W.P.(C) 7450 of 2008, whereby Sh.Indra Vir Singh, Junior Engineer (Civil) was directed to be assigned look after charge regardless of the chargesheet issued against him.

7. Pursuant to the disposal of the OA of the respondent by order dated 6th August, 2009, the petitioners considered the case of the respondent and passed order dated 1st October, 2009 which is as under:-

“Whereas the Hon’ble CAT (PB) in the case of Shri Surender Singh v. MCD in OA No.1466/2009 on 06.08.2009 ordered in para No.04 that:

“We have heard both the counsel and perused the pleadings as well. Applicant’s grievance is that till date no charge sheet has been filed in the police case yet he has not been given the look after charge though his juniors have been assigned the next promotional post of Assistant Engineer. This averment has not been denied by the respondents in their counter affidavit. They have themselves stated that applicant’s case is under active consideration for grant of ad hoc promotion, therefore, this OA is disposed off with a direction to the respondents to consider the claim of the applicant for look after charge of ad hoc promotion to the post of Assistant Engineer (Civil) at par with his juniors because till date, admittedly, no charge sheet has been filed in the police case. This should be done within a period of 4 weeks from the date of receipt of a copy of this order under intimation to the applicant.”

2. Whereas, Screening Committee held on 02.07.2009, considered the case of Shri Surender Singh for ad hoc

promotion to the post of Assistant Engineer (Civil) in the pay scale of Rs.6500-10500/-(pre-revised) and observed that:

“Unfit (due to pending Police Case No.2031/SIO(P)/Vig/CBI/2007, prosecution sanctioned and charge sheet has been filed in the court of law on 29.12. 2008).”

3. Since, the Hon'ble CAT had passed the directions based on the averment that no charge sheet has been filed in the police case till date, but the fact of matter is that charge sheet in Police Case No.2031/SIO(P)/Vig/CBI/2007 had been filed on 29.12.2008. Hence, the Screening Committee, after consideration, didn't recommend the name of Shri Surender Singh for ad hoc promotion to the post of AE(C).

4. In view of the above facts, the official is intimated that he was not recommended by the Screening Committee for ad hoc promotion to the post of Assistant Engineer (Civil)”

8. The petitioners held that though the OA No.1466/2009 was filed in respect of not assigning the look after charge, however, while considering the original application of the respondent, a direction was given to consider the claim of the respondent for look after charge or ad hoc promotion to the post of Assistant Engineer (Civil).

9. The plea of the respondent for ad hoc promotion was, however, declined on account of pendency of police case No.2031/SIO(P)/Vig/CBI/2007 whereby prosecution was sanctioned and charge sheet had been filed on 29th December, 2008. The petitioners noted that since the order dated 6th August, 2009 in OA

No.1466 of 2009 was passed on the premise that no charge sheet had been filed till that date, but in fact a charge sheet had been filed on 29th December, 2008, therefore, the case of the respondent was not considered by the screening committee for ad hoc promotion to the post of Assistant Engineer (Civil).

10. Aggrieved by the order dated 1st October, 2009 the respondent filed another original application being OA No.3678 of 2009 contending, inter-alia, that the ad-hoc promotion be made only on the basis of seniority and since it is not disputed that juniors to the respondent have been assigned ad-hoc promotion, therefore, the respondent is also entitled for ad hoc promotion. The respondent further contended that initially his name was approved for ad-hoc promotion to the post of Assistant Engineer (Civil) along with other officials, however, subsequently, his name was dropped on account of pendency of the criminal case against him. The respondent contended that mere pendency of the criminal case does not disentitle the respondent from getting the ad-hoc promotion. In the OA 3678 of 2009 filed on 18th December, 2009, the respondent categorically asserted that the criminal charges had not been registered against him. His grievance was that he has been compelled to work under his juniors, who would be writing his confidential report, which would be the decisive factor at the time of

regular promotion when the respondent would be considered for promotion by DPC along with his junior officials.

11. The OA 3678 of 2009 filed by the respondent against the order dated 1st October, 2009 declining to appoint the respondent on ad-hoc basis was contested by the petitioners contending, inter-alia, that the screening committee after considering the case of the respondent has passed the order dated 1st October, 2009 and did not recommend his name for ad-hoc appointment to the post of Assistant Engineer (Civil). The petitioners contended that Sh.Pankaj Goel, Sh.R.P.Chahal & Mohd.Asif were promoted on ad-hoc basis to the post of Assistant Engineer (Civil) on the recommendation of the screening committee held on 2nd July, 2009, which was subsequently approved by the competent authority as the assessment was made in respect of these officers on the basis of vigilance clearance report received from the vigilance department which reflected that the cases were not pending against these persons. Reliance was placed on the letter dated 3rd December, 2009 seeking information regarding these officials from the Deputy Commissioner (Police), Economic Offences Wing, Crime Branch, Qutub Institutional Area, New Delhi. The case of the respondent was distinguished on the ground that the name of the respondent had also been considered by the screening committee in its meeting held on 2nd March, 2009, however, due to pending cases where charge sheets had

been filed by the Central Bureau of Investigation, his name was not recommended for promotion. Later on an additional affidavit dated 29th April, 2010 was also filed before the Tribunal. Reliance was placed on a detail report of the vigilance department dated 9th April, 2010. The report indicated that three letters dated 3rd November, 2009, 12th January, 2010 & 8th April, 2010 were addressed to the Deputy Commissioner (Police) Institutional Area, New Delhi, but no information was received in the Vigilance Department except for the letter dated 17th November, 2009 stating that the charge sheet has been filed in FIR No.82/2002, under Section 420/120/63 of C.R. Act and the case is pending trial in case of respondent and not in case of other officials.

12. The Tribunal, however, considering the pleas and contentions of the parties allowed the prayer of the respondent and directed the petitioners to accord the respondent the look after charge of the post of Assistant Engineer (Civil) w.e.f. 19th October, 2007 with difference of salary including arrears. It was also observed that subsequent charge sheet issued to the respondent by the Central Bureau of Investigation shall take its own course. Before the Tribunal, the respondent had rather contended that the current duty charge is nothing but an ad-hoc promotion to the post of Assistant Engineer (Civil) and that OM dated 14th November, 1992 of DOP&T has equal applicability to ad-hoc promotion. It was also held that denial of the look after charge to the

respondent was discriminatory. The Tribunal also applied the guidelines on sealed cover for ad-hoc promotion and held that look after charge provides that in case a person against whom prosecution for a criminal charge is pending, only then his promotion can be withheld and it can be put under sealed cover. Since as on 19th October, 2007 even an FIR was not registered against the respondent, therefore, not granting look after charge on the basis of the preliminary investigation carried by the Central Bureau of Investigation could not be a bar for promotion of the respondent, and his right to be considered for promotion has to be understood in the right perspective. In the circumstances, it was held that illegality has been committed by the petitioners and, therefore, the original application of the respondent was allowed. The reasoning of the tribunal as stipulated in paras 9 and 10 of the impugned order dated 12th May, 2010 is as follows:-

“9. On perusal of the guidelines on sealed cover for ad hoc promotion which now could be equated with the methodology adopted and approved by the MCD i.e. look after charge provides that in case a person against whom prosecution for a criminal charge is pending only then his promotion can be withheld and should be put under sealed cover. As on 19.10.2007, one of the conditions was existed not even an FIR was registered against the applicant. As such, denying promotion to the applicant on the basis of a process preliminary to the investigation carried by the CBI is not a barred for promotion as his right to be considered for promotion has not been considered in the right perspective by the respondents. This illegality cannot be countenanced in law. As the applicant is basing his right when he was free from all intricacies and was not facing a criminal trial, his fundamental right guaranteed for promotion which is protected not only under Article 14 but

also under Article 16 of the Constitution of India. We are not declaring his right on negativity but on the basis of the principle which has been enunciated by way of administrative instructions and approved in law by the Apex court ruling the consideration for promotion as a fundamental right. As the consideration was not apt in law, deprivation of this promotion to the applicant has prejudiced him, as his juniors have got the position getting higher emoluments to which had been deprived of.

10. Resultantly, the OA is allowed. Respondents are directed to accord to the applicant the look after charge of the post of Assistant Engineer (Civil) w.e.f. 19.10.2007 with difference of salary, including arrears within a period of three months from the date of receipt of a copy of this order. We also observe that subsequent charge sheet issued to the applicant by the CBI, the law shall take its own course. No costs.”

13. The order directing the petitioners to accord respondent the look after charge to the post of Assistant Engineer (Civil) w.e.f. 19th October, 2007 by order dated 12th May, 2010 in OA No.3678/2009 is challenged by the petitioners, inter-alia, on the grounds that the petitioners’ department due to exigencies of work assigns to its employee the additional duty of its next promotional post on look after basis as a stop gap measure which is without any additional remuneration and the remunerations are paid to the employees according to the post held on regular basis. It was contended that since the look after charge was not assigned to the respondent, he could not be directed to be given look after charge retrospectively from 19th October, 2007, as it is practically not possible and in any case on account of having look after charge the respondent does not get any additional salary, therefore, the directions

of the Tribunal to grant the arrears to the respondent w.e.f. 19th October, 2007 is contrary to the terms and conditions for giving look after charge. It was also contended that the charge sheet had been filed against the respondent on 29th December, 2008 and on account of the Central Bureau of Investigation registering the case against the respondent where the charge sheet had also been filed, the respondent was not entitled for consideration to the next post even on ad-hoc basis, nor was the sealed cover procedure to be followed in case of appointment on ad-hoc basis. It was categorically contended that assigning look after charge is not a promotion but entrustment of additional work without any remuneration and that the allegation of the respondent that his juniors have been promoted and that despite this he has not been given look after charge is a legally not sustainable. It was reiterated that the juniors to the respondent, who had been given look after charge were not given any financial benefit and that the respondent cannot contend that he has been discriminated. In any case, it was contended that when the order dated 19th October, 2007, giving look after charge to some of the Junior Engineers (Civil) was assigned, the complaints against the respondent were pending investigation which were received during the period 2005-2006. The look after charge was also assigned to other Junior Engineers (Civil) for a period of 6 months by order dated 19th October, 2007. It was also contended on behalf of the petitioners that by order dated 1st October,

2009 the case of the respondent for giving ad-hoc promotion to the post of Assistant Engineer (Civil) in the pay scale of Rs.6500-10500/- (Pre-revised) was declined on account of the criminal case pending against him, where sanction for prosecution had been granted and the charge sheet had also been filed on 29th December, 2008. In the circumstances, it is contended that the respondent could not be given look after charge from 19th October, 2007 retrospectively, nor he is entitled for any remuneration for look after charge as no additional remuneration for higher post are payable if an employee is entrusted look after charge. Therefore, it is urged that the Tribunal had gravely erred in directing the petitioners to give the difference of salary on account of alleged entitlement of the respondent for look after charge retrospectively. Since on 2nd March, 2009 a criminal case was pending against the respondent and the charge sheet had already been filed, therefore, not recommending the case of the respondent for ad-hoc promotion to the post of Assistant Engineer (Civil) cannot be faulted by the respondent on any of the grounds contended on behalf of the respondent.

14. The writ petition is contested by the respondent contending, inter-alia, that he is already getting the pay scale of Assistant Engineer (Civil), the higher post, w.e.f. 22nd September, 2009, which according to the respondent was granted on the basis of the recommendations of the

same Screening Committee. It is contended that as a result, the respondent will not be entitled for any difference of salary and retrospective effect will not give any advantage to the respondent. Copy of the order dated 22nd September, 2009 was also relied on. Consequent to the recommendations of the Departmental Screening Committee first financial upgradation under the ACP Scheme was granted to the respondent from 1st May, 2007 in the pay scale of Rs.6500-10500/- with stipulation that financial upgradation is subject to final acceptance by audit and subject to rectification/withdrawal, if any, adverse report comes to the notice of the department in future.

15. This Court has heard the learned counsel for the parties in detail. It is apparent that the Tribunal has considered assigning the look after charge as equivalent to an ad-hoc promotion to an employee pursuant to recommendations of the Screening Committee. The learned counsel for the respondent has not been able to show any rules and regulations on the basis of which it can be inferred and held that the assignment of look after charge is equivalent to the grant of ad-hoc promotion subject to approval and recommendations by the Screening Committee.

16. No rule or regulation has also been brought to the notice of this Court which will mandate assignment of look after charge in case financial upgradation under the ACP Scheme is granted to the Junior

Engineer (Civil). This is not in dispute that the charge sheet was not filed in the criminal case pending against the respondent on 19th October, 2007. However, this has also not been disputed that the complaints for the period 2005-2006 were pending against the respondent in regard to his connivance with private constructors of having committed gross irregularities/violation in connection with civil construction works carried out for improvement of Public Parks in Sector 15 & 16 of Rohini. In any case, the petitioners filed the original application being OA No.1466 of 2009, which was disposed of by order dated 6th August, 2009 with directions to the petitioners to consider the claim of the respondent for look after charge or ad hoc promotion to the post of Assistant Engineer (Civil) on the premise that till that date i.e. 6th August, 2009 no charge sheets had been filed in the criminal case. The learned counsel for the respondent has contended that the charge sheets had been filed in the criminal case No.2031/SIO (P)/Vig./CBI/2007 on 29th December, 2008 and the fact was not disclosed by the petitioners. This plea of the respondent cannot be accepted, as there was no reason to have not disclosed that the charge sheet had been filed against him by the petitioners. Since, the charge sheet had been filed against the respondent, he cannot take the benefit of its non disclosure for any reason or alleged lapse on the part of the petitioners before the Tribunal. In the circumstances, pursuant to order dated 6th August, 2009 passed in OA No.1466/2009, if the direction

was given to the petitioners to reconsider the case of the respondent for assignment of look after charge or ad-hoc promotion on the premise that till 6th August, 2009 no charge sheet had been filed, if the charge sheet had already been filed on 29th December, 2008, i.e. prior to order dated 6th August, 2009, the respondent cannot take the benefit of the same, nor can he contend that he is entitled for look after charge or the ad-hoc promotion.

17. By order dated 1st October, 2009 pursuant to the directions given in OA No.1466 of 2009 by order dated 6th August, 2009, it has been categorically asserted that the charge sheet had been filed in the court of law against the respondent on 29th December, 2008, therefore, while reconsidering the case of the respondent on 1st October, 2009, if the petitioners has held that his case was considered by the Screening Committee for giving ad-hoc promotion and since, the Screening Committee had not recommended his case for ad-hoc promotion to the post of Assistant Engineer (Civil), it could not be faulted by the respondent on any of the grounds raised by him in his OA No.3678/2009, which was decided by the Tribunal by order dated 12th May, 2010.

18. By order dated 1st October, 2009, the petitioners had decided that the respondent is not entitled for ad-hoc promotion to the post of

Assistant Engineer (Civil), however, by impugned order the relief has been granted to the respondent to be given look after charge for the post of Assistant Engineer (Civil) with retrospective effect from 19th October, 2007, which cannot be sustained on any rationale in the facts and circumstances of the present case. The respondent had sought ad-hoc promotion to the post of AE (C), whereas the Tribunal has granted the relief to assign look after charge for the post of AE (C) to the respondent retrospectively.

19. The learned counsel for the respondent also categorically conceded that the respondent had not insisted that sealed cover procedure be followed for the purpose of his ad-hoc promotion to the post of Assistant Engineer (Civil). Even in the original application, it was not claimed that the petitioners be directed to follow the sealed cover procedure for the purpose of ad-hoc promotion of the respondent to the post of Assistant Engineer (Civil). This cannot be disputed by the respondent that the assignment of the look after charge is distinguishable from ad-hoc promotion of an employee to the post of Assistant Engineer (Civil). If the respondent himself had claimed ad-hoc promotion to the post of Assistant Engineer (Civil) then the Tribunal could not have granted the relief of assigning look after charge of the post of Assistant Engineer (Civil) retrospectively w.e.f. 19th October, 2007. No cogent reason has been disclosed for granting a relief, which

had not been sought by the respondent and because assigning look after charge is not equivalent to promoting an employee on ad-hoc basis. On the date of reconsideration of the case of the respondent on 1st October, 2009 pursuant to the directions given in original application No.1466 of 2009 by order dated 6th August, 2009, if on account of charge sheet being filed on 29th December, 2008 against the respondent in the criminal case pending against him, if the ad-hoc promotion to the post of Assistant Engineer (Civil) could not be granted to the respondent, *a fortiori*, even look after charge could not be assigned to the respondent retrospectively though this was not even sought by the respondent.

20. For the foregoing reasons, the order of the Tribunal dated 12th May, 2010 in OA No.3678/2009 suffers from material illegality and irregularity and cannot be sustained in the facts and circumstances and in law, nor the directions can be given to the petitioners to retrospectively accord the look after charge of the post of Assistant Engineer (Civil) to the respondent w.e.f. 19th October, 2007 and to pay the arrears. The respondent is neither entitled to be accorded look after charge of the post of Assistant Engineer (Civil), nor is the respondent entitled for ad-hoc promotion to the post of Assistant Engineer (Civil) in the facts and circumstances.

21. Consequently, the writ petition is allowed. The impugned order dated 12th May, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.3678/2009, titled as 'Surender Singh v. Municipal Corporation of Delhi & Ors.', directing the petitioners to accord to the respondent the look after charge of the post of Assistant Engineer (Civil) w.e.f. 19th October, 2007 and to pay the arrears of salary is set aside and the original application being OA No.3678/2009 seeking directions to the petitioners to issue order for ad-hoc promotion of the respondent to the post of Assistant Engineer (Civil) and for the grant of all the consequential benefits is dismissed. Considering the facts and circumstances the parties are, however, left to bear their own costs.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

August 11, 2011

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