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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1245/2016**

Date of decision: 23rd November, 2016

OM PRAKASH

..... Petitioner

Through: Mr. K.K. Rai, Senior Advocate with
Mr. Randhir Kumar & Mr. Anshul Rai,
Advocates.

versus

THE COMMISSIONER SOUTH DELHI MUNICIPAL
COPORATION AND ORS

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC with
Mr. Mimansak Bhardwaj, Mr. Nikhil
Bhardwaj, Mr. Sriram & Mr. Bishan Dass,
Advocates for R-1 & 3/SDMC.
Mr. M.S. Saini, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

With the consent of the parties, we have taken up the writ petition for hearing and disposal.

2. The petitioner, Dr. Om Prakash, in this writ petition impugns the order dated 22nd January, 2016 passed by the Principal Bench of the Central Administrative Tribunal whereby Original Application No 4145/2015 filed by him has been dismissed.

3. The petitioner is aggrieved that his junior Dr. Ravinder Sharma,

respondent No.4 herein, has been given the look after charge as Additional Director (Veterinary Services), in the South Delhi Municipal Corporation and the petitioner has, thereby, been superseded.

4. At the outset we note, that recruitment rules for the cadre of Veterinary Services have not been framed though the said service/ cadre has been in existence for more than 14 years. Veterinary Service Department came into existence vide Order/Memo dated 1st November, 2002.

5. The Tribunal, in our opinion, has rightly described the situation as unfortunate. Absence of recruitment rules and the adhoc policies of the respondent No 1 Corporation, have been a cause of confusion and consequent litigation. Firstly, only functional appointments to the promotional posts have been made by grant of current duty/look after charge. Secondly, no set or fixed procedure for selection/appointment has been followed.

6. Our attention was drawn to the office Noting by Director (Veterinary Services) dated 29th July, 2011 and thereafter the recommendations of the Screening Committee dated 8th December, 2011 for assigning of functional designations to the posts of Director (Veterinary Services), Additional Directors and Deputy Directors in the Veterinary Services cadre. Pursuant to the recommendations of the Screening Committee, the office of the Commissioner, MCD had approved assignment of functional designations and appointment to the said posts.

7. In the present case, however, the Superintendant in the Central

Establishment Department had prepared a note dated 13th October, 2015 for assigning look after charge to the post of Additional Director and Deputy Director in Veterinary Services department/cadre of the South Delhi Municipal Corporation. The relevant portion of the said note reads as under :-

“A proposal for assigning the look after charge of Addl. Director (Veterinary Services) and Dy. Director (Veterinary Services) in Veterinary Services Department, SDMC was forwarded to CED/SDMC.

Director, Local Bodies (DLB) allocated following posts in Veterinary Services Department, SDMC.

<i>S. No.</i>	<i>Posts</i>	<i>Sanctioned</i>	<i>Filled</i>	<i>Vacant</i>
<i>1</i>	<i>Director (Veterinary Services)</i>	<i>1</i>	<i>1</i>	<i>0</i>
<i>2</i>	<i>Addl. Director (Veterinary Services)</i>	<i>1</i>	<i>0</i>	<i>1</i>
<i>3</i>	<i>Dy. Director (Veterinary Services)</i>	<i>6</i>	<i>5</i>	<i>1</i>

As per report of the administrative department, there are vacant posts of Addl. Director (Veterinary Services) and Dy. Director (Veterinary Services) in Veterinary Services Department, SDMC (Page 25/N).

Final Seniority List of Veterinary Doctors is placed at page 14-16/C. A consolidated list of the same is prepared which is placed in the file as flag ‘A’ and seniority as per SDMC allocation, seniority list is also placed in the file as flag ‘B’.

The posts of Addl. Director (Veterinary Services) and Dy.

Director (Veterinary Services) in Veterinary Services Department, SDMC are lying vacant since May 2012, the date of trifurcation of MCD into three new Corporations. Since then no effort was taken in CED to fill up the posts. Hence, on going through the file, it has been observed that the department concerned has initiated the proposal in August, 2014 to fill up the posts.

Composition of Departmental Promotion Committee/Departmental Screening Committee may be seen at page 34/N and also at page 21/C of the file.

Based on the above referred statement of facts it is concluded that it may not be possible to hold DPC/DSC for the post of both Addl. Director (VS) and Deputy Director (VS) in the absence of formal composition of DPC & notified Recruitment Regulations (RRs) in veterinary Services Department in SDMC.”

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“Therefore, in the public & Municipal interest and also for smooth functioning of Department as an interim arrangement we may issue orders delegating the powers OR assigning to look after the duties of Addl. Director (Veterinary Services) & Dy. Director (Veterinary Services) to their respective immediate subordinates officers available and found to be eligible for administrative convenience in Veterinary Services Department in SDMC.

Going by the seniority list of Veterinary Doctors, SDMC, officer mentioned at serial number 1, i.e., Dr. RBS Tyagi has already been promoted as Director (VS) SDMC. In respect of officer mentioned at serial number 2, i.e. Dr. Om Prakash, it is submitted that at the time of granting of look after charge of Dy. Director to the Veterinary Officers of erstwhile MCD in the year 2011, the name of

Dr. Om Prakash, VO was not considered on the ground that RDA case was pending against him. In the RDA Sh. Om Prakash, VO was given minor penalty of "Censure" (Page -23/C). Further owing to the same OA No.1070/2013 in which Director, Local Bodies, Commissioners, SDMC, NDMC, Director (P) NDMC, AC (Estt.) NDMC and Director (VS) SDMC are respondents (Flag- 'C') was filed, which has been dismissed. The matter for giving functional charge to incumbent at serial number 2 (Dr. Om Prakash) is pending in North Delhi Municipal Corporation (NDMC).

It may also be pertinent to mention here that the instant proposal pertain to merely grant of look after charge to the officers who are already in higher grade pay and is not a case of promotion or grant of functional designation. It may be noteworthy to mention here that adequate experience at appropriate level may be considered as a legitimate base for consideration of grant of look after charge as proposed by administrative department which is absent in case of Dr. Om Prakash, VO. Moreover, as stated in pre-paras the matter of giving him functional designation is pending in North DMC."

8. The proposal to appoint the fourth respondent as the Additional Director was approved by the Director (Personnel), the Additional Commissioner as well as the Commissioner, of the South Delhi Municipal Corporation, who had put their signatures on the office file. None of them have made any comment or observation except the Director (Personnel) of the Central Establishment Department, who had commented that the notes enclosed in the letter be perused and the recommendations were being submitted for consideration and approval of the Commissioner.

9. During the course of hearing it was pointed out, and it is

accepted, that the petitioner had faced regular departmental enquiry and punishment of “censure” was imposed vide order dated 5th February, 2013. The said punishment has been accepted by the petitioner. The petitioner has, however, disputed the other averments made in the aforesaid note regarding O.A. No.1070/2013. Copy of the order passed in the said O.A. dated 2nd April, 2013 placed on record, indicates that this OA was filed by one Dr. Suresh Chand Sharma. The petitioner herein was not a party to the said OA. This OA pertains to a purported proposal for assignment/designation of duties of the post of Director, Veterinary Services to Dr. Om Prakash. This OA was dismissed recording that a mere proposal would not confer any cause of action. The reference, therefore, in the aforesaid note to OA No.1070/2013 and the fact that it was dismissed, which is apparent, is rather confusing and not really relevant to the issue of grant of functional charge to the fourth respondent and not the petitioner.

10. The petitioner relying on the decision of the Division Bench decision of Delhi High Court in *Ved Prakash Gupta vs. Municipal Corporation of Delhi; 1997 (43) DRJ (DB) 93* submits that imposition of minor penalty of censure does not by itself debar such employees from consideration for promotion to the higher post. His fitness for promotion has to be judged by seniority on the basis of overall assessment of service record. We have referred to the said decision only to highlight that the imposition of penalty of censure vide order dated 5th February, 2013 would not have barred or prohibited consideration of the petitioner for assigning look after charge of the

post of Additional Director. Indeed, the respondents have followed the said dictum. Consideration for promotion, and the impact of the order of censure are two different aspects. However, what is absent and missing from the note dated 13th October, 2015 is the overall assessment of the performance of the petitioner, who admittedly was senior to respondent No.4, Dr. Ravinder Sharma, who was given the said look after charge of the post of Additional Director.

11. South Delhi Municipal Corporation has relied on the circular dated 14th December, 1973 which they submit is applicable. As per the said circular, current charge arrangements should be made in the order of seniority subject to the condition that the officers/officials should be otherwise acceptable with reference to the service character rolls and confidential reports. Further a single warning or an adverse remark in his ACRs in the prior three years is not the only guiding factor for determination of his suitability but rather the officer's/official's ACRs for the last 3 to 5 years should form the basis of the assessment for grant of the current duty charge.

12. It is palpable and apparent to us that the aforesaid criterion was not taken into consideration in the note dated 13th October, 2015 of the Superintendent. The said lapse has, according to us, resulted in an error in the decision making process as the relevant factors and considerations which have to be taken into account were ignored and remained unconsidered. By this, we do not mean that the punishment of censure imposed on the petitioner should be altogether ignored, or was not to be taken into consideration.

13. The petitioner has also relied upon the circular dated 20th July,

1998 issued by the MCD pursuant to the judgment of the High Court in *Civil Writ Petition No.4598/1995 titled Kapur Chand Vs. MCD & Others*. The relevant portion of the circular reads:-

- “i) Adhoc/current charge appointment/promotions shall be limited to a period of one year only and shall automatically cease on the expiry of the terms appointed or one year from the date of appointment whichever be earlier.*
- ii) Rule of seniority-cum-fitness shall be followed (while making any adhoc arrangements).*
- iii) Such adhoc appointments/promotions shall not be continued or renewed as camouflage on regular appointments.*
- iv) MCD would observe the Government instructions regarding initiation of regular appointment/promotions at least four months prior to anticipated vacancies.*
- v) Intimation shall be given to UPSC of all such appointments/promotions.”*

It is submitted with merit that the note dated 13th October, 2015 does not accord due credence to the principles and criteria enunciated in this circular.

14. Another factual infirmity recorded in the note pointed out by the petitioner relates to 2011 recommendations. It is submitted that the petitioner was to be considered for the post of Additional Director and not for the post of Deputy Director as he was already working at an equivalent post. Learned counsel for the petitioner, on this aspect,

has drawn our attention to the recommendations of the Screening Committee dated 8th December, 2011 and has pointed out that Dr. Hari Lal, who is the immediate junior of the petitioner was considered and recommended for functional charge as Additional Director.

15. While the respondent, South Delhi Municipal Corporation, disputes the contention, they accept the factual position that Hari Lal, who was the immediate junior of the petitioner, was recommended for being given functional charge as Additional Director.

16. For the aforesaid reasons, we would partly allow the writ petition with the direction to the respondent, i.e the Commissioner, South Delhi Municipal Corporation to examine the issue afresh and either constitute a Screening Committee, or otherwise examine the file and pass appropriate orders after taking into consideration the criteria as stipulated in the circulars dated 14th December, 1973 and 17th April, 1998. The mandate of the circulars would be kept in mind and duly observed.

17. The aforesaid exercise would preferably be completed within a period of four months. We clarify that we have not expressed any opinion on the merits or on suitability/fitness of the petitioner or of respondent No.4. These issues would be examined afresh without being influenced by the observations made in this order or in the order passed by the Tribunal or the impugned order.

18. Consequently, the impugned order passed by the Tribunal will be treated as set aside and the assignment of look after charge granted to the 4th respondent would be treated as subject to further orders being passed by South Delhi Municipal Corporation in terms of this

order. The question of impact and effect of punishment of censure is left open, to be decided by the screening committee/commissioner. We clarify that the 4th respondent would continue on the current duty charge till the said exercise is completed.

19. The Commissioner, South Delhi Municipal Corporation will also take up the issue of framing of recruitment rules with the Director (Local Bodies) in accordance with the provisions of the Delhi Municipal Corporation Act, 1957. In case there is substantial delay, it will be open to the petitioner, the 4th respondent or other officers to file a petition for framing of the said recruitment rules.

20. The writ petition is disposed of, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

NOVEMBER 23, 2016
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