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

+ W.P.(C) 10656/2015

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Judgment dated 28th July, 2016

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Ms.Minipushkarna, Standing counsel
for NDMC

versus

RAKESH AHUJA

..... Respondent

Through: Ms.Rashmi Chopra and Ms.Asiya,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S.MEHTA

G.S.SISTANI, J (ORAL)

1. Challenge in this writ petition is to the order dated 30th October, 2015, passed by the Central Administrative Tribunal (in short '*the Tribunal*').
2. The brief facts of the case are that the respondent joined the petitioner as a Junior Engineer (civil) on 30th November, 1988. In the year, 2005, the CBI registered an FIR against some officials of the Municipal Corporation including the respondent with respect to the supply of inferior retro reflective road sign boards. A challan was filed by the CBI on 9th December, 2005. Meanwhile, on 2nd July, 2009, the respondent was considered for *ad hoc* promotion to the post of Assistant Engineer (Civil) in the Department Screening Committee where he was assessed as 'unfit' for *ad hoc* promotion. In the year 2014, the respondent approached the Tribunal by filing an O.A seeking a prayer of *ad hoc*

promotion. By an order dated 20th February, 2015, the tribunal directed the petitioner herein to consider the respondent for *ad hoc* promotion as Assistant Engineer (Civil) disregarding proceedings pending against him.

3. In pursuance of the order dated 20th February, 2015, on 1st June, 2015, the respondent was considered by the Departmental Screening Committee and assessed as 'unfit'. This has led to filing of a contempt petition wherein an order was passed on 22nd September, 2015. Thereafter on 30th September, 2015, the tribunal directed the petitioner to grant *ad hoc* promotion to the respondent which has led to the filing of the present writ petition.
4. Learned counsel for the petitioner submits that since the DPC was held on 29th October, 2015, the respondent can now only be considered for *ad hoc* promotion after two years, i.e., in the year 2017. Learned counsel further submits that the tribunal has exceeded its jurisdiction and failed to take into consideration that in two DPCs', the respondent was declared 'unfit'.
5. Per contra, counsel for the respondent submits that the petitioners were to be guided by the Office Memorandum dated 14th September, 1992. As per Clause 5 of this Office Memorandum, if a disciplinary case/criminal prosecution is not concluded even after the expiry of two years from the date of the meeting of the first DPC which kept its finding in a sealed cover, in such a situation, the Appointing Authority may review the case of the Government servant to consider the desirability of giving *ad hoc* promotion based on five factors which are to be considered. Clause 5 of the Office Memorandum reads as under:

“5 In spite of the six monthly review referred to in para 4 above, there may be some cases, where the disciplinary

case/criminal prosecution against the Government servant is not concluded even after the expiry of two years from the date of the meeting of the first DPC, which kept its findings in respect of the Government servant in a sealed cover. In such a situation the appointing authority may review the case of the government servant, provided he is not under suspension, to consider the desirability of giving him ad-hoc promotion keeping in view the following aspect:-

- a) Whether the promotion of the officer will be against public interest;*
- b) Whether the charges are grave enough to warrant continued denial of promotion;*
- c) Whether there is any likelihood of the case coming to a conclusion in the near future;*
- d) Whether the delay in the finalization of proceedings, departmental or in a court of law, is not directly or indirectly attributable to the Government servant concerned; and*
- e) Whether there is any likelihood of misuse of official position which the Government servant may occupy after ad-hoc promotion, which may adversely affect the conduct of the departmental case/criminal prosecution.*

The appointing authority should also consult the Central Bureau of Investigation and take their views into account whether the department proceedings or criminal prosecution arose out of the investigations conducted by the Bureau.”

6. Ms.Chopra, learned counsel for the respondent, submits that despite filing of the contempt petition, the respondent failed to take note of Clause 5 of the Office Memorandum and did not consider the case of the respondent for *ad hoc* promotion.
7. We have heard learned counsel for the parties and also considered their rival submissions. Before the rival submission of the learned counsel for

the parties can be considered, we may notice that the OA filed by the respondent herein was disposed of by an order dated 20.02.2015 passed by the tribunal. The tribunal while passing the impugned order took note of Clause 5 of the Office Memorandum and, thereafter, allowed the application thereby directing the petitioner herein to consider the respondent for *ad hoc* promotion. Since the direction passed was not followed, this has led to the passing of the order dated 22nd September, 2015, in contempt proceedings, which reads as under:-

“Learned counsel for respondent Nos. 1 and 3 submitted that order passed by the Tribunal is to be implemented by respondent No.2.

As prayed by learned proxy counsel for respondent No.2, three weeks’ time is granted for filing compliance report, failing which respondent No.2 will remain present in the Court.

List on 30.10.2015.

*A copy of this Order be given to learned counsel for respondent No.2 as **dasti**.”*

8. On 30th October, 2015, the following order was passed, which reads as under:

“Learned counsel for respondent No.2- North DMC submitted that the applicant was considered for ad hoc promotion to the post of Assistant Engineer (Civil) twice, i.e., by the Departmental Screening Committee (DSC) dated 01.06.2015 and 29.10.2015. According to him, the DSC met on 01.06.2015 found the applicant unfit and the recommendation of the DSC met on 29.10.2015 has been kept in sealed cover.

It is made clear that the direction for ad hoc promotion of the applicant was given for the reason that the disciplinary/ criminal cases were pending against him for more than two

years and the recommendation regarding ad hoc promotion cannot be kept in sealed cover and the respondents should open the sealed cover and implement the recommendation of DSC, which met on 29.10.2015, before the next date of hearing.”

9. We find no infirmity in the direction issued to the petitioner by the Tribunal for the reason that para 5 and 5.1 of the Office Memorandum dated 14.09.1992 makes abundantly clear that “*whereby the recommendations regarding the promotion of a government servant under suspension; in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending; and government servant in respect of whom prosecution for criminal charge is pending are required to be kept in sealed cover, it has been specifically provided that where the disciplinary case/criminal; prosecution is pending for over two years, he should be given ad hoc promotion*”.
10. Resultantly, the present petition must fail. At this stage, Ms.Pushkarna submits that it may be clarified that it would be open for the petitioner to take into account Clause 5(a)(e) of the Office Memorandum, extracted in para 4 above. In our view, this requires no clarification. We direct the petitioner to consider the respondent for *ad hoc* promotion based on Clause 5 and 5.1 of the Office Memorandum dated 14.9.1992.
11. Present petition stands dismissed.

G.S.SISTANI, J

I.S.MEHTA, J

JULY 28, 2016 sv