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

+ W.P.(C) 3611/2017

NORTH DELHI MUNICIPAL CORPORATION

..... Petitioner

Through: Mr. Proshonto Sen, Sr. Adv. with
Mrs. Biji Rajesh and Mr. Gaurang
Kanth, Adv.

versus

PC MEENA AND ORS

..... Respondents

Through: Mr. M.K. Bhardwaj, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

28.04.2017

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Cav No.417/2017

Since the Caveator has put in appearance, the caveat stands discharged.

W.P.(C) 3611/2017 & C.M. No.15858/2017

1. The petitioner/ NDMC has preferred the present writ petition to assail the order dated 06.04.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in C.P. No.100/40/17 arising out of O.A. No.100/67/2016 preferred by the respondent. By the impugned order, the tribunal has directed the personal appearance of the officers of the respondent in the contempt proceedings on the ground that, despite undertaking given by the respondent to comply with the judgment of the tribunal dated 12.07.2016, the petitioner has not complied with the same. The order further states that in case the petitioner complies with the said

judgment, they need not personally appear before the tribunal. The next date fixed in the case is 02.05.2017.

2. The Tribunal, while allowing O.A. No.67/2016 vide order dated 12.07.2016 gave the following operative direction to the petitioner NDMC:

“7. In view of the above circumstances, we dispose of this Application with the following directions:-

(a) The Vigilance Department shall communicate its opinion to the administrative department within a period of two weeks, failing which it shall be presumed that there is no vigilance matter pending against the applicant.

(b) The Competent Authority shall open the sealed cover within a period of two weeks thereafter and depending upon the outcome of the report of the Departmental Promotion Committee in the sealed cover further action shall be taken.

(c) In the event, the applicant is found fit on opening of the sealed cover, he shall be accorded promotion within a period of four weeks from the date of opening of the sealed cover on regular basis as Superintending Engineer in accordance with recommendations of DPC and thereafter consider him for further promotions to the next higher posts of Chief Engineer (Civil) and Engineer-in-Chief from the date his juniors were so promoted. The entire process shall be completed within a period of six months.”

3. Learned counsel for the petitioner has argued that in compliance of the judgment passed by the tribunal in O.A. No.67/2016 dated 12.07.2016, the petitioner herein has opened the sealed cover and promoted the respondent to the post of Superintending Engineer. The respondent has also been promoted to the post of Chief Engineer. However, when it came to the promotion to the post of Engineer in Charge, the respondent could not be granted the said promotion on account of the fact that the respondent does not have two years regular service in the grade of Chief Engineer. It is

argued that even after grant of relaxation in terms of the OM dated 18.03.1988, as amended, the respondent not having served as a Chief Engineer even for a period of one year, he could not be promoted as Engineer in Chief from the date when his juniors were so promoted.

4. In support of his submission, learned counsel for the petitioner has placed reliance on the judgment of the Supreme Court in ***R. Prabha Devi & Ors. v. Govt. of India through the Secretary, Ministry of Personnel and Training, Administrative Reforms & Ors.***, AIR 1988 SC 902 and in particular to the following observation made in the said decision:

“15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years' approved service in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade I post of C.S.S. This rule is equally applicable to both the direct recruit Section Officers as well as the promotee Section Officers. The submission that a senior Section Officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant

for promotion to a higher post unless he fulfils the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can over-ride it in the matter of promotion to the next higher post. The rule in question which prescribes an uniform period of qualified service cannot be said to be arbitrary or unjust violative of Articles [14](#) or [16](#) of the Constitution. It has been rightly held by the Tribunal:

When certain length of service in a particular cadre can validly be prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience.

It has also been observed:

In any event, the appropriate Rule making Authority is the best judge in this regard. The Rule making Authority is certainly competent to amend the Rule and extend the period from 6 years to 8 years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the Rule making Authority; the Tribunal cannot sit in judgment over the opinion of the Rule making Authority. No Court or Tribunal can substitute its own view in a matter such as this. Such a Rule framed by a competent Authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution”.

5. Mr. Sen has submitted that in the light of the aforesaid position, the

observations made by the tribunal in the impugned order that there is non compliance of the directions issued in OA 67/2016 on 12.07.2016 is not correct. All that the petitioner was required to do was to consider the case of the respondent for promotion to the post of Superintending Engineer; Chief Engineer, and; Engineer in Chief and the said exercise has been undertaken.

6. Mr. Sen further submits that the personal appearance of the Chairman and other officers of the NDMC may be exempted on the next date fixed by the tribunal, since it is for the counsels to explain the alleged non compliance of the order passed in the OA No.67/2016 dated 12.07.2016.

7. On the other hand, learned counsel for the respondent/ Caveator, firstly, points out that the petitioner had even earlier not complied with the said order which led to the filing of CP No.404/2015 which was decided on 19.11.2015. A copy of the said order has been tendered in court and read by learned counsel. On that occasion, the tribunal had refrained from taking any coercive action against the officers of the petitioner only out of indulgence.

8. Mr. Bhardwaj has also relied upon OM dated 10.04.1989 and in particular on para 18.4.3, which reads as follows:

“18.4.3 If the officers placed junior to the officer concerned have been promoted, he should be promoted immediately and if there is no vacancy the junior most person officiating in the higher grade should be reverted to accommodate him. On promotion, his pay should be fixed under F.R. 27 at the stage it would have reached, had he been promoted from the date the officer immediately below him was promoted but no arrears would be admissible. The seniority of the officer would be determined in the order in which his name, on review, has been placed in the select list by DPC. If in any such case a minimum period of qualifying service is prescribed

for promotion to higher grade, the period from which an officer placed below the officer concerned in the select list was promoted to the higher grade, should be reckoned towards the qualifying period of service for the purpose of determining his eligibility for promotion to the next higher grade”.

9. He has also placed reliance on the decision of the Supreme Court in ***Union of India & Ors. v. K.B. Rajoria***, (2000) 3 SCC 562. Mr. Bhardwaj has submitted that in this case, the Supreme Court considered the expression “regular service” in the light of the definition of the term “regular” and held that regular service does not mean actual service. The relevant extract from this decision reads as follows:

“... Third, the High Court erred in construing the words regular service in the grade as actual physical service. If that were so, then an ad hoc appointee who actually serves in the post could also claim to be qualified to be considered for the post of Director General. The High Court itself held that ad hoc service rendered by any of the parties would not count towards eligibility. Finally, while considering the definition of the word regular in the Concise Oxford Dictionary, Ninth Edition, the High Court noted that it meant: (1) conforming to a rule or principle, systematic; (2) harmonious, symmetrical; (3) acting or done or recurring uniformly or calculably in time or manner, habitual, constant, orderly; (4) conforming to a standard of etiquette or procedure, correct, according to convention; (5) properly constituted or qualified, not defective or amateur, pursuing an occupation as one's main pursuit”.

10. The Supreme Court in this decision has also referred to the OM dated 10.04.1989 as would be evident from the aforesaid extract. Mr. Bhardwaj has also submitted that the impugned order is only an interim order and there is no final order passed by the tribunal in the contempt proceedings. He submits that for this reason this court should not interfere with the same at

this stage.

11. Having heard learned counsels, we are not inclined to interfere with the impugned order passed by the tribunal. We do not wish to make any observations on the merits of the submissions advanced by the learned counsel since the same may have a bearing on the proceedings before the tribunal. However, considering the fact that the contempt proceedings are still in progress and no final order has been passed, in our view, it would be appropriate that the petitioner complies with the impugned order and the officers of the petitioner appear before the tribunal to explain their position.

12. The petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 28, 2017

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