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

+ **WP(C) No.5453/2015 & CM No.9809/2015**

+ Date of Decision: 10th July, 2017

SANJEEV KUMAR SHARMA & ANR. Petitioners

Through: Mr.Sandeep Sethi, Sr. Adv. with
Mr.Pramod Gupta, Adv, Ms.Kashvi
Dutta, Adv. & Ms.Kreeti Joshi, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL & ORS. ..Respondents

Through: Mr.Vivek B. Saharya, Standing
Counsel for NDMC.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The Petitioners, who are degree holder Assistant Engineers (Civil) working with the respondent no.1, have impugned the order dated 15th May, 2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, dismissing their OA, seeking a direction to the respondent no. 1 to regularize their promotions to the post of Assistant Engineers (Civil) w.e.f. 26th April, 2005.

2. The Petitioners who are presently working as Assistant Engineers (Civil), had initially joined the respondent No.1/NDMC as Junior Engineers (Civil) in 1990-91. For the promotional post of Assistant Engineers (Civil), the Recruitment Rules prescribed 25% quota to be filled by direct recruitment while the balance 75% posts quota to be filled by departmental promotion i.e. by promotion of the serving Junior Engineers (Civil). The Recruitment Rules, however, prescribed different eligibility criteria for promotion of diploma holder Junior Engineers (Civil) and for degree holder Junior Engineers (Civil). While the diploma holder Junior Engineers (Civil) required eight years of service, the degree holder Junior Engineer (Civil) required four years of service in the grade to become eligible for promotion. However, those diploma holder Junior Engineers (Civil), who acquired degree during the course of service, needed to have only three years of service after passing of the degree or a total of five years of service, whichever was more beneficial to the officers.

3. In the year 1990, an amendment was introduced in these Recruitment rules whereby a specific quota of 25% was fixed-within the departmental promotion quota of 75%, for the degree holder engineers and, therefore, after this amendment, a separate seniority list

of degree holder Junior Engineers (Civil) was drawn on 17th August,1990 for filling up the post of Assistant Engineers (Civil). In the said list, the Junior Engineers holding the degree were placed with reference to the date of acquiring of the degree i.e. the person who acquired the degree earliest was placed at serial No. 1 and those acquiring degree subsequently were placed after him.

4. Aggrieved by the aforesaid seniority list, a few diploma holder Junior Engineers who had acquired degrees later in time, challenged the said seniority list dated 17th August,1990 before this Court, by way of CWP No. 1570 of 1992, on the plea that their seniority position which was settled prior to the 1990 amendment, had been disturbed and the persons who were shown junior to them in the original list, had stolen a march over them in the 1990 seniority list merely because they had acquired the degree earlier. The writ petition was allowed by the learned Single Judge vide his judgment dated 12th November, 1997, wherein the seniority list dated 17th August 1990 was quashed.

5. Aggrieved by the quashing of the seniority list by the learned Single Judge, some degree holder Junior Engineers (Civil) namely Shri M.A Khan and Shri Ashok Kumar, preferred an LPA No. 280 of

1997 which was allowed vide judgment dated 19th October,2011 and the Division Bench, came to a categorical conclusion, that the date of acquiring the degree would be the criteria for fixation of seniority in the quota of degree holders for reckoning their eligibility for promotion to the post of Assistant Engineers (Civil). However, during the pendency of the LPA, the respondents continued to make promotions to the post of AE (Civil).

6. However, since the Petitioners were not promoted despite their eligibility and availability of 12 vacancies in the quota of degree holder Junior Engineers (Civil), they filed a writ petition being WP (C) No. 18471-73 of 2004 before this Court, praying for a direction to the respondents to forthwith promote them to the post of Assistant Engineers (Civil) in the quota of degree holder with effect from the year 2000.

7. During the course of hearing of the aforesaid writ petition, this Court after noticing the fact that there was no dispute in the seniority list upto serial no.55 and also the fact that the petitioners had been waiting for almost five years for their promotion, vide its order dated 12th April, 2005 directed the respondents to promote the twelve senior most eligible persons in the seniority list dated 1st January,2002, in

which all the petitioners have been placed amongst the senior most 12 officers. Pursuant to the order dated 12th April, 2005 passed by this Court, the respondents conducted a regular Departmental Promotion Committee and passed an order dated 26th April, 2005 promoting 12 Junior Engineers (Civil) including the petitioners as Assistant Engineers (Civil) on ad hoc basis. In 2009, this writ petition was transferred to the Central Administrative Tribunal, Principal Bench and numbered as TA No.1078 of 2009. The Tribunal after considering the submissions of the parties and the effect of the earlier order passed by this Court, allowed the TA and, after coming to a conclusion that there was no impediment as to why the services of the petitioners could not be treated as regular w.e.f. 26th April, 2005, directed the respondents to look into this aspect and further directed that in case the respondent – NDMC regularizes the services of the petitioners as Assistant Engineers (Civil) w.e.f. 26th April, 2005 as regular promotion for all intents and purposes, it shall also pass appropriate orders. The relevant findings and directions of the Tribunal in its order dated 20th April, 2012 read as under:-

“5. Learned counsel for Petitioners on instructions from his clients, submits that the Petitioners have been granted promotion on ad-hoc basis as Assistant Engineers (C) w.e.f. 26.04.2005

alongwith other persons and these ad-hoc promotions have been made subject to the final outcome of LPA No. 280/1997, WP Nos.18471-73/2004 in the High Court and Civil Appeal Nos. 2219 and 2222/2002 in the Apex Court and argued that his clients will be satisfied in case the ad-hoc promotions so granted vide order No. SC(CE-II)/2508/SAG-I dated 26.04.2005 are treated as regular promotions for all intents and purposes and the Petitioners are not pressing their claim for promotion from back date, as prayed for in the TA. We see substance in the submissions made by the learned counsel for applicants. From the perusal of the office order dated 26.04.2005, which has been placed on record, it is evident that ad-hoc promotions were granted to the Petitioners and other persons mentioned in the said order, as the matter was sub judice, although such promotions were made by the competent authority on the recommendations of the DPC. Since the controversy in the matter has been put at rest by the judgment rendered by the Division Bench of the High Court in LPA No.280/1997 thereby setting aside the judgment of the single Judge, we see no impediment as to why the services of the Petitioners cannot be treated as regular w.e.f 26.04.2005.

6. The Respondent –NDMC are accordingly directed to look into this aspect and in case the Respondent - NDMC regularizes the services of the Petitioners as Assistant Engineer (C) w.e.f 26.04.2005 as regular promotion for all intents and purpose, the Respondent shall pass an appropriate order qua this aspect. In that eventuality, the directions given by us in the earlier part of the Judgment ;for granting relief to the applicants from due date shall not be given effect to.”

8. Though after the passing of the above order dated 20th April, 2012 by the Tribunal, the Respondents were expected to take expeditious steps to regularize the services of the petitioners as Assistant Engineers (Civil) w.e.f 26th April, 2005 but it appears from the record that no steps were taken to decide as to whether the petitioners were to be treated as Regular AE (Civil) w.e.f 26th April, 2005 and on the other hand, a DPC was held on 3rd September, 2013 wherein a number of Junior Engineers (Civil) both degree and diploma holders including the Petitioners were considered for promotion.

9. On the basis of the recommendations of the DPC, the respondents passed an order dated 12th September, 2013 in which the petitioners were granted regular promotion as Assistant Engineers (Civil) w.e.f 3rd September, 2013 against the vacancies of 2009 and 2011 respectively.

10. Aggrieved by the action of the respondent in grading their promotion as AE (Civil) w.e.f 3rd September, 2013, instead of w.e.f. 26th April, 2005, the petitioners first submitted a representation and thereafter approached the Tribunal by way of OA No. 4043 of 2013.

11. Before the Tribunal, the petitioners while referring to a number of infirmities in the proceedings of the DPC which was held on 3rd September, 2013, had contended that the DPC had by wrong calculation of vacancies in the degree holders quota, deprived the deserving degree holder Junior Engineers (Civil) including the petitioners of their rightful promotion. The Petitioners' main contention before the Tribunal was that once directions had been given vide order dated 20th April, 2012 passed in TA No. 1078 of 2009 to regularize their services as Assistant Engineer (Civil) w.e.f 26th April, 2005, which order had attained finality, the Respondents were bound to regularize their promotions w.e.f 26th April, 2005 and their consideration by another DPC on 3rd September, 2013 was wholly unwarranted. The respondents, however, justified their action of holding DPC on 3rd September, 2013 and grant of promotion to the Petitioners w.e.f 3rd September, 2013. It was contended by the Respondents that the petitioners had no right to get promotion from 26th April, 2005 as their right to get promotion from 26th April, 2005 had not yet been adjudicated. The Respondents' further plea was that there was no direction of any court to regularize the services of the Petitioners as Assistant Engineers (Civil) w.e.f 26th April, 2005 and

they were fully justified in granting them regular promotion w.e.f 3rd September, 2013.

12. The Tribunal, after noticing the orders passed in TA No. 1078 of 2009 on 20th April, 2005, observed that the simple issue to be decided was whether the Respondents were justified in holding a fresh DPC and not simply confirming the ad hoc promotions vide order dated 26th April, 2005. The Tribunal, however, came to a conclusion that the respondents had only been directed to look into the aspect of regularization w.e.f 26th April, 2005 and there were no earlier directions to actually regularize them w.e.f 26th April, 2005. The Tribunal further held that the language of the order dated 20th April, 2012 clearly showed that the respondents were only directed to look into the claim of the petitioners and give them promotion from the date they became eligible as per their category i.e non reserved degree holder, and subject to availability of vacancies in that category. The Tribunal, accordingly, rejected the claim of the petitioners by holding that the respondents had granted them promotion vide order dated 12th September, 2013, in accordance with the recommendations of the DPC held on 3rd September, 2013 and there was no irregularity in the same.

13. Aggrieved by the order passed by the Tribunal by which their claim for regularization as Assistant Engineer (Civil) w.e.f 26th April, 2005 had been rejected, the petitioners have filed the present petition.

14. Mr. Sandeep Sethi, learned senior counsel arguing for the petitioner, has contended that the Tribunal had misdirected itself and had, in fact, failed to consider the true effect of its earlier order dated 20th April, 2012. He has contended that while disposing of the Petitioner's TA No. 1078 of 2009 vide order dated 20th April, 2012, the Tribunal had-while directing the respondents to look into the aspect of regularization of the petitioners w.e.f. 26th April, 2005, clearly held that there was no impediment as to why the services of these petitioners should not be treated as regular w.e.f. 26th April, 2005, and in fact, had also held that there was no controversy regarding their seniority. Mr. Sethi has further contended that in view of the specific findings and observations of the Tribunal in its earlier order dated 20th April, 2012, the respondents ought to have regularized the petitioners as Assistant Engineer (Civil) w.e.f. 26th April, 2005.

15. Learned senior counsel for the Petitioners has also drawn our attention to the order dated 2nd November, 2016 passed by this Court

and has contended that once the respondents has admitted that there were infirmities in the DPC held on 3rd September, 2013-for promotion to the post of AE (Civil), the impugned order dismissing the OA was liable to be set aside on this ground alone. It would be apt to reproduce the order dated 2nd November, 2016 passed by this Court which reads as under:-

Learned counsel for the petitioners has submitted that the Respondent in their affidavit dated 17.12.2015 has stated as under:

“5. That it is humbly submitted that a DPC was held on 03.09.2013 for promotion to the post of AE(Civil) and therein some ambiguities were noticed and the approval has been sought for, for review of DPC dated 03.09.2013 and all efforts are being made for holding review DPC after preparing new roster register from 2002 onwards and the actual position of seniority- list of AE(C) will be drawn on the basis of review DPC. A copy of the said noting is annexed herewith for the kind perusal of this Hon’ble Tribunal as ANNEXURE A-1”

Learned counsel for the respondent-New Delhi Municipal Corporation will obtain instructions as to why the review DPC had not been held till date in spite of averments made in paragraph 5.

We clarify that we have not expressed any opinion on the merits of the case.

Relist on 09.01.2017.”

16. Per contra, arguing for the respondents, Mr. Vivek B. Saharya, learned counsel for Respondent No.1/NDMC, has reiterated the submissions made before the Tribunal and contended that there was no direction in the Tribunal's earlier order dated 20th April, 2012 to grant regular promotion to the Petitioners w.e.f. 26th April, 2005. He has drawn our attention to the additional affidavit dated 6th March, 2017 wherein, while referring to their earlier affidavit dated 17th December, 2015, the Respondents have stated that while examining the proposal for holding a review DPC, it had been discovered that no regular DPC had been held for the years 2000 to 2002 and, therefore, before conducting a review DPC for the years 2003-2013, the DPC for the years 2000 to 2002 would also required to be held. Relying on their additional affidavit dated 6th March, 2017, the counsel for respondent no.1 has submitted that vide order dated 17th December, 2015, the Engineers of Civil Engineering Department have now been granted DTL pay scales retrospectively and the grade pay of AE (Civil) has increased to Rs. 5400/- due to which the post of AE (Civil) now lies in category 'A' and, therefore, the same can be filled only in consultation with the Union Public Service Commission.

17. The further submission of the counsel for the Respondents is that in view of upgradation of the post of AE (Civil) to category 'A' retrospectively, clarification was sought from the UPSC. It is stated that the UPSC has vide its order dated 9th January, 2017, advised the Respondents that first the recruitment rules have to be amended in consultation with the UPSC, and review DPCs can be held only after the publication of the amended recruitment rules. Learned counsel for the respondent no.1 has, therefore, by relying on the affidavit dated 6th March, 2017 submitted that the NDMC would not be in a position to submit any time-line by which the review DPCs would be completed, and has further referred to para 10 of the affidavit which outlines the process which NDMC proposes to follow. Para 10 of the NDMC's additional affidavit dated 6th March, 2017 reads as under:-

“That the following process is to be followed for creation of posts and amendment to the recruitment rules:

- a) After approval of the Council for (i) creation of the post and (ii) amendment of recruitment rules as advised by UPSC, the proposal of amendment of recruitment rules is to be submitted to UPSC in terms of section 40 of NDMC Act 1994.
- b) Once UPSC approves the recruitment rules, the same is to be placed before the Council for consideration/approval of suggestion, if any, that may be proposed by UPSC. Thereafter, the recruitment

rules will be submitted to Ministry of Home Affairs for approval.

c) After approval by Ministry of Home Affairs, the recruitment rules are to be submitted to Govt. of NCT of Delhi for publication in official gazette.

d) After publication of recruitment rules in official gazette, the Departmental Promotion Committee meeting to review the promotions for the post of AE(Civil) will held from the year 2000-2013 by UPSC. That based on recommendations of UPSC, promotion orders will be issued by NDMC with approval from the Competent Authority.”

18. It becomes evident from the above additional affidavit that the plea of the Respondents is that all recommendations for promotions to the post of AE(Civil) can now be made only in consultation with the UPSC, and that too after amending the rules. The respondents are, therefore, unable to inform the Court about the likely time in which the entire process would be completed.

19. Mr. Saharya, learned counsel for the Respondents, has also drawn our attention to the judgment of the Coordinate Bench of this Court dated 22nd August, 2016 in WP(C) No.7380/2016 Mohar Singh Meena Vs. NDMC & Ors., which was disposed of after recording the statement of counsel for the NDMC that the review DPC was likely to be held within four weeks from the date of the order. He submits that

in view of the subsequent clarification from the UPSC, the review DPC could not be held within the time initially envisaged. He has prayed that since the Coordinate Bench is already considering the issue of holding the review DPC and of non-compliance of the order dated 22nd August, 2016, the hearing of the present petition may be deferred.

20. We have heard the submission made by learned senior counsel for the petitioners and the learned standing counsel for the respondent no.1 and with their assistance, perused the records. Before proceeding further, it would be apt to deal with the prayer made by the counsel for the Respondents to defer hearing on account of the pending consideration of WP(C) No. 7380/2016 by a Coordinate Bench of this Court. Having perused the judgment dated 22nd August, 2016 passed by the Coordinate Bench in WP(C) No.7380/2016 Mohar Singh Meena (supra), and also the subsequent orders passed therein, we feel that the said writ petition and the subsequent orders therein deal only with the DPC proceedings held on 3rd September, 2013 and the proposal to hold a review DPC in respect thereof, which issue is not at all being dealt with in the present case. We, therefore, reject the

submission of Mr. Saharya, seeking the adjournment of this petition to await the orders in WP(C) No.7380/2016.

21. In the present writ petition, the sole issue which we were required to adjudicate and, which alone has been considered by us, is as to whether the petitioners were entitled to get regular promotion w.e.f. 26th April, 2005 and, therefore, we see no reason to defer consideration of the present case.

22. We have given our thoughtful consideration to the issues raised in the present petition. The answer to above issue would depend on the determination as to whether the Tribunal, while allowing the TA filed by the petitioners, vide its order dated 20th April, 2012, had only directed the respondents to consider the matter, or as to whether it had found merit in the petitioner's plea that they were entitled to be regularized as AE (Civil) w.e.f. 26th April, 2015.

23. Having perused the order dated 20th April, 2012 passed by the Tribunal and also the order dated 26th April, 2005 passed by the respondents themselves-granting ad hoc promotion to the petitioners as AE (Civil), it becomes evident that the Tribunal had after considering all the earlier orders passed by this Court as well as on perusal of the officer order dated 26th April, 2005, come to a

categorical conclusion that the controversies in the matter had been put at rest by the judgment rendered by the Division Bench of this Court in LPA No. 280 of 1997, and there was no impediment as to why the services of the applicants therein (petitioners herein) could not be treated as regular w.e.f. 26th April, 2005.

24. The Tribunal had specifically held that in accordance with the judgment of the Division Bench passed in LPA No.280/1997, the promotion to the post of Assistant Engineer (Civil) was to be made on the basis of the seniority list prepared in the year 1990 and subsequently, updated in the year 2002. Vide its order dated 20th April, 2012, the Tribunal also held that the Applicants (present petitioners) had made out a case for grant of their promotion in terms of the seniority list dated 17th August, 1990 prepared pursuant to the amended recruitment rules and in the light of findings recorded by the Bench of this Court in the aforesaid LPA. After finding merit in the plea of the Petitioners that they were entitled for promotion in terms of the seniority list dated 17th August, 1990, the Tribunal also held that promotion granted to the Petitioners and other persons mentioned in the order dated 26th April, 2005 were made ad hoc only because the matter was sub judice, although such promotions were made by the

competent authority on the recommendations of the DPC. From the aforesaid conclusion arrived at by the Tribunal while disposing of the Petitioner's earlier OA, there can be no doubt about the fact that after 20th April, 2012, there remained no controversy or cloud qua right of the Petitioners to get regular promotion to the post of Assistant Engineer (Civil) w.e.f. 26th April, 2005 and the Tribunal has while passing the impugned order, erred in holding that the promotion granted to the petitioner vide order dated 26th April, 2005 was only ad hoc and could not be straightaway confirmed as regular. Even otherwise, in view of the conclusions arrived at by the Division Bench, in LPA No.280/97 to the effect that persons obtaining degree first, come into the eligible post earlier and are ranked higher for purposes of consideration for promotion, the petitioners based on the date of the acquisition of degree, were rightly placed higher in the seniority list in 2000 and were, therefore, entitled to get promotion as soon as vacancies in their quota became available. It being an admitted fact that twelve vacancies of Assistant Engineer (Civil) were available in April, 2005, the Petitioners cannot be deprived of the fruits of this promotion, which was granted to them on 26th April, 2005 by holding a DPC as per Rules, which promotion was termed as

ad hoc only because the matter was sub judice and once those pending controversies were put at rest by the judgment dated 19th November, 2011 passed by the Division Bench, the Petitioners could not be denied regular promotion as Assistant Engineer (Civil) from the said date.

25. We, therefore, are of the view that while passing the impugned order, the Tribunal has failed to appreciate the true effect of its earlier order dated 20th April, 2012 and has erroneously treated the same as a mere direction to the respondents to look into the grievance of the petitioners, whereas a careful perusal of the said order clearly shows that the entitlement of the petitioners to get regular promotion as AE (Civil) w.e.f. 26th April, 2005 stood crystallized vide order dated 20th December, 2012. It appears that the Tribunal has, while selectively relying on certain observations in its order dated 20th April, 2012, failed to consider the entire perspective in which the order was passed. The tribunal appear to have lost sight of the fact that the Petitioner's promotion on 26th April, 2005 was made ad hoc, only because of the pending litigation, and once the issue of seniority on the basis of date of acquiring the degree qualification had attained finality, the Petitioners were entitled to regular promotion w.e.f. 26th April, 2005.

26. In the result, the petition is allowed and the order dated 15th May, 2015 passed by the Tribunal is set aside with no order as to costs. The OA is accordingly allowed and the Petitioners are held entitled to regular promotion as AE (Civil) w.e.f 26th April, 2005 and the order dated 12th September, 2013 of promotion stands modified to this extent only.

C.M No.9809/2015

27. In view of the writ petition having been allowed, this application does not survive for adjudication and is dismissed as such.

(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

JULY 10, 2017/aa