

\$~54.

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

+ **Date of Decision: 17.07.2017**

% **W.P.(C.) No. 5898/2017**

NORTH DELHI MUNICIPAL CORPORATION Petitioner

Through: Mr. Kumar Rajesh Singh, Advocate.

versus

NARESH MEHTA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 12.08.2017 passed in O.A No.100/1151/2013 by the Central Administrative Tribunal (CAT/ Tribunal). The Tribunal, by the impugned order has allowed the said Original Application preferred by the respondent and directed the petitioner to treat the respondent having been regularly appointed to the post of Assistant Engineer (Auto) with effect from the date of his joining as Assistant Engineer on deputation basis.

2. The respondent was initially appointed as Junior Engineer (Mechanical) under the then Municipal Corporation of Delhi (MCD) on

regular basis in the year 1983. He possessed a diploma in Mechanical Engineering. Vide order dated 19.09.2000, the applicant, along with two other Junior Engineers (Mechanical) was appointed to the post of Assistant Engineer (Auto) in the pay scale of Rs.6500-10500 on deputation basis, initially for a period of one year, which was extended from time to time, and lastly extended up to 17.09.2009.

3. The respondent initially preferred Writ Petition (Civil) No.11324/2006 to seek the quashing of order dated 19.09.2000 whereby he was declared to have been working on deputation basis on the post of Assistant Engineer (Auto). The same was transferred to the Tribunal vide Order dated 29.01.2009. The same was registered as T.A. No.339/2009 and was disposed of vide Judgment dated 23.11.2009, with the direction to the petitioners to process the claim of the applicants therein, in the light of the observations made in the aforementioned order within a period of three months from the date of receipt of a copy of the Order.

4. The petitioner released a combined provisional seniority list pertaining to all the three corporations (post its trifurcation) for the post of Assistant Engineer (Auto), including the names of the officers who had joined as AE (Auto) during 2006. However, the name of the respondent/applicant – who had joined as on 19.09.2000 in the same post, was not included. The respondent submitted his representation for deletion of the word “Deputation” from his appointment letter dated 19.09.2000, and to include his name in the seniority list of AE (Auto) by placing him at the appropriate position in the seniority list. Since the grievance of the

respondent was not remedied, he approached the Tribunal to seek deletion of the word “Deputation” from the appointment letter dated 19.09.2000 issued to him while appointing him to the post of Assistant Engineer (Auto). In effect, the respondent sought a declaration that he stood absorbed in the petitioner NDMC. The tribunal allowed the O.A., directing the petitioner to treat the respondent as having been regularly appointed to the post of Assistant Engineer (Auto) with effect from the date of his joining as Assistant Engineer on deputation basis vide order dated 19.09.2000 against the promotional quota of 33-1/3 % as prescribed under the Recruitment Rules. The tribunal also held that the respondent will be entitled to seniority in the cadre of Assistant Engineer (Auto) with effect from the above said date. The discussion found in the impugned order reads as follows:

“4. We have heard the learned counsel for parties. Recruitment to the post of Assistant Engineer (Auto) in the MCD is governed by statutory rules, as notified by the Government on 27.11.1984 (Annexure A-3). Schedule appended to the Recruitment Rules provides the qualification and mode of appointment / promotion to the post of Assistant Engineer (Auto). Clauses 6 and 7 of the Schedule deal with the mode of appointment and qualifications for direct recruitment, whereas Clauses 10 and 11 provide for the appointment to the post of Assistant Engineer (Auto) from promotional mode. Under Clause 10, 33-1/3% quota is prescribed for promotion, failing which by transfer on deputation, whereas 66.2/3% provided for direct recruitment from the feeding category of Foreman. Under Column 11, a Foreman (Auto) with three years regular service in the grade in the case of those possessing degree in Mechanical or Automobile Engineering from a recognized University or equivalent and seven years regular service in the grade in the case of those possessing diploma in Mechanical or Auto Engineering from a recognized University/Institution or

equivalent is eligible for promotion. For transfer on deputation (including short term contract), officers under the Central/State Government/Union Territory/Public Undertaking/ Semi-Government/ Autonomous or statutory Organization/MCD and its Undertakings holding the post in the rank of Junior Engineer or equivalent and those holding post in the rank of Junior Engineer with possession of degree in Mechanical or Auto Engineering from a recognized University or equivalent and seven years regular service in the grade in the case of those possessing diploma in Mechanical or Auto Engineering from a recognized University/Institution or equivalent are eligible. It is provided that the period of deputation shall not exceed three years.

5. *It is not in dispute that the applicant possesses the essential qualification, i.e., diploma in Mechanical Engineering. The Rule prescribes the appointment to the post of Assistant Engineer (Auto) by promotion, failing which by transfer on deputation. In the counter affidavit filed on behalf of the respondent, it is specifically mentioned that in the year 2000, 5 vacant posts of Assistant Engineer (Auto) under promotion quota in MCD were available. It is stated that against 5 posts, only 2 Foremen (Auto) were found eligible for promotion to the post of Assistant Engineer (Auto) as per the Recruitment Rules. It is further stated that since there was no candidate in the feeder cadre for filling up the post of Assistant Engineer (Auto) under promotion quota, the Department decided to fill up remaining 3 posts on deputation basis from the departmental Junior Engineers (Mechanical) as allowed in the Recruitment Rules of Assistant Engineer (Auto). The applicant was thus appointed to the post of Assistant Engineer (Auto) in the pay scale of `6500-10500 on deputation basis initially for a period of one year. It is further stated that deputation has been extended from time to time and lastly up to 17.09.2009.”*

5. The case of the petitioner is that the respondent did not fulfill the criteria under the prescribed Recruitment Rules notified for promotion to the post of Assistant Engineer (Auto). The petitioner further contends that the respondent had been provisionally promoted, only on deputation basis.

6. Having heard learned counsel for petitioner and perused the record, we cannot agree with the submission of learned counsel for the petitioner. There is no dispute raised by the petitioner to the facts, as recorded by the Tribunal in the impugned order – that in the year 2000, five vacant posts of Assistant Engineer (Auto) under promotion quota in MCD were available. The feeder cadre was that of Foremen (Auto). Against the 5 posts, only 2 Foremen (Auto) were found eligible for promotion to the post of Assistant Engineer (Auto) as per the Recruitment Rules. Since there was no other eligible candidate in the feeder cadre for filling up the post of Assistant Engineer (Auto) under promotion quota, the petitioner/ Department decided to fill up the remaining 3 posts on deputation basis from the departmental Junior Engineers (Mechanical), as provided in the Recruitment Rules for recruitment of Assistant Engineer (Auto). Thus, the respondent was appointed to the post of Assistant Engineer (Auto) against a clear vacant post.

7. It is also clear that the respondent possessed essential qualifications for the post in question. Furthermore, the Recruitment Rules clearly prescribe deputation as one of the modes of appointment to the post of Assistant Engineer (Auto), in case of non-availability of candidates in the promotional channel – for whom 33-1/3% posts are reserved.

8. In view of the aforesaid circumstances, we are of the view that not only the respondent was duly qualified for the post in question, but he also served as Assistant Engineer (Auto) for a period of 16 years. Repatriation of the respondent to the post of Junior Engineer (Mechanical), when his juniors have already been promoted in their own cadre, would amount to grave injustice to the respondent. It is evident that deputation could not have continued beyond a period of three years. If the petitioner intended to treat the respondent only as a deputationist even beyond three years, they should have put him to notice, or repatriated him to his parent department. The fact that the petitioner continued to retain him – and even now he continues to serve the petitioner in the same department, shows that the petitioner never intended to repatriate the respondent.

9. For the aforesaid reasons, we find no merit in the present petition and dismiss the same.

न्यायमेव जयते

VIPIN SANGHI, J.

REKHA PALLI, J.

JULY 17, 2017