

\$~17-19.

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

+ **CONT.CAS(C) 718/2015**

K C MEENA

..... Petitioner

Through: Mr. Rajeev Sharma, Advocate
versus

P K GUPTA

..... Respondent

Through: Mrs. Biji Rajesh for Mr. Gaurang Kanth
for NDMC
Mr. Naresh Kaushik, Mr. Devik Singh
and Gaurav Ahlawat for R-4/UPSC
Ms. Prabhsahay Kaur with Ms.
Aakanksha Badkur for GNCTD

+ **W.P.(C) 3921/2014 C.M. No. 7900/2014**

DILIP RAMNANI

..... Petitioner

Through: Mr. Rajeev Sharma, Advocate
versus

DIRECTOR, LOCAL BODIES & ORS.

..... Respondent

Through: Mrs. Biji Rajesh for Mr. Gaurang Kanth
for NDMC
Mr. Naresh Kaushik, Mr. Devik Singh
and Gaurav Ahlawat for R-4/UPSC
Ms. Prabhsahay Kaur with Ms.
Aakanksha Badkur for GNCTD

+ **W.P.(C) 5356/2014 C.M. No. 6004/2016**

K.C. MEENA

..... Petitioner

Through: Mr. Rajeev Sharma, Advocate
versus

NORTH DMC & ORS.

..... Respondent

Through: Mrs. Biji Rajesh for Mr. Gaurang Kanth
for NDMC
Mr. Naresh Kaushik, Mr. Devik Singh
and Gaurav Ahlawat for R-4/UPSC
Ms. Prabhsahay Kaur with Ms.
Aakanksha Badkur for GNCTD

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

11.12.2018

%

The respondents have filed the affidavit dated 12.07.2017 stated to be in compliance of the directions issued in our order dated 19.12.2014. While passing the said

order, this court had directed all the Municipal Corporations to ensure that regular promotion for vacancies, in respect of which DPCs and Review DPCs had not been carried out in terms of the rules and court orders, be held in a time bound manner, not later than three months from the date of the said order.

The respondents have stated that they have undertaken the exercise of holding the DPCs for making regular promotions to the post of Assistant Engineer, Executive Engineer and Superintending Engineer. The sanctioned strength of the posts in the hierarchy have been disclosed as follows:

Sr. No.	Name of Posts	Sanctioned Strength	Provisions of RR
1.	Junior Engineer (Civil)	834 (Direct Recruitment)	Diploma/ Degree in Civil
2.	Asstt. Engineer (Civil)	396 (50% DR Quota, 50% PR quota). And now 75% for PR quota and 25% for DR quota w.e.f. 01.07.2004	JE (Civil) Degree holder, 05 years regular service JE (Civil) Diploma Holders, 08 years regular service
3.	Executive Engineer (Civil)	125 (Promotional post only)	AE(Civil) degree holder, 05 year regular service AE(Civil) Diploma holders, 10 years regular service
4.	Supdt. Engineer (Civil)	33 (Promotional Post)	EE Civil having 05 years regular service
5.	Chief Engineer (Civil)	13 (Promotional post)	SE (Civil) having 07 years regular service
6.	Engineer-in-Chief	03 (Promotional Post)	CE(Civil) having 02 years regular service

So far as promotion to the post of Chief Engineer (Civil) is concerned, it is stated that the last DPC for the post of Chief Engineer (Civil) was held in the year 2006. Further DPC for the post of Chief Engineer (Civil) has not been conducted due to non availability of eligible candidates. The respondents state that after finalisation of the

seniority list of Superintending Engineer, they had requested the UPSC to conduct the DPC for the post of Chief Engineer (Civil). However, the UPSC has returned the same with the observation that there are no eligible candidates and hence regular DPC for the post of Chief Engineer (Civil) cannot be held. It is further stated that the senior most Superintending Engineer, as per their eligibility, are given adhoc promotion to the post of Chief Engineer. Similar is the response is with regard to holding of the DPC for the post of Engineer-in-Chief. In that respect it is stated that the last DPC was held in the year 2009 and, thereafter, due to non availability of regular Chief Engineers, further DPC has not been conducted.

The basis for the stand taken by the respondent - that there are no Superintending Engineers (Civil) with the requisite service in that grade on regular basis, is that since regular promotion to the post of Superintending Engineer (Civil) were notified on 29.12.2015 and thereafter on 16.01.2017, the seniority of the regular promotees in the grade of Superintending Engineer (Civil) would count from the said respective dates. The minimum service required in the grade of Superintending Engineer, under the Recruitment Rules, for being eligible for promotion to the post of Chief Engineer is seven years. On that premise, the respondents have urged that none of the Superintending Engineers are eligible, as on date, for consideration for promotion to the post of Chief Engineer, though vacancies for the said posts are existing.

Learned counsel for the petitioner submits that this stand of the respondents is incorrect and unsustainable. The petitioners have been officiating as Superintending Engineers since the year 2006. We may observe that there may be others who may be officiating as Superintending Engineers since the year 2006, or even earlier, and are suffering only due to delayed holding of DPCs.

In our view, the stand taken by the respondent is neither fair nor legally sustainable. Those officers who were eligible to be promoted as Superintending Engineers, but were not so promoted on regular basis on account of failure of the respondents to hold the DPC, and were asked to officiate in the grade of Superintending Engineers, cannot be denied their seniority in the said grade from the dates that they have been officiating, or the dates when the vacancy arose, whichever is later.

Our attention has been drawn to two orders passed by this court. The first order was passed in CWP No.3091/1997 on 24.05.2002. A learned Single Judge of this Court (Sanjay Kishal Kaul, J., as his Lordship then was) directed as follows:

“In view of the aforesaid a direction is issued that service rendered by the petitioners on current date charge will be counted towards their service for determining the eligibility for promotion to the next higher post if the petitioners were eligible, a vacancy existed and the DPC was not held within a period of one year from the vacancy arising. The respondents shall do the needful and intimate it to the petitioners within a period of 6 weeks from today. Writ petition is disposed of in the aforesaid terms”.

The second order was passed by this court in WP(C) No.5985/2002 on 28.04.2004 by placing reliance on the order passed in WP(C) No.3091/1997. This court directed the MCD that service rendered by the petitioners in that case on current duty charge will be counted towards their service for determining their eligibility for promotion to the next higher post. Pertinently, these orders have been implemented by the Municipal Corporation as is evident from the communication dated 23.07.2012 issued by the Additional Commissioner (Estt.). Taking note of, and placing reliance on the judgment in CWP No.3091/1997 dated 24.05.2002 and the order in WPC No.1548/1999 dated 07.05.2004, the respondents, inter alia, observed:

*“During the meeting of the Screening Committee, it was observed that in some Court cases, such as CW 3091/1997 dated 24.05.2002 in the case of P.S. Dahiya & Ors and also in order dated 7.5.2004 in W.P.(C.) No. 1548/99, the Hon’ble High Court of Delhi had directed the MCD that service rendered by the petitioners on Current Duty Charge be counted towards their service for determining their eligibility for promotion to the next higher grade. Taking into account the position brought out above, particularly provisions contained in Circular No.F3/2/72/CED(A)/ 167 dated 14.12.1973, the directions of the judiciary in the cited cases and DOP&T’s instructions regarding consideration of promotion of the senior along with his junior on fulfilling the prescribed conditions, **the Committee is of the view that the service rendered on Current Duty Charge basis needs to be counted for the purpose of reckoning of service in the post of SE(C) for promotion to the post of CE(C) on Current Duty Charge basis**”.*(emphasis supplied)

Thus, it does not lie in the mouth of the respondents to contend that the service

rendered by the petitioners as Superintending Engineers on current duty charge basis or adhoc basis would not count for purpose of determining their eligibility for consideration for regular promotion to the post of Chief Engineer. We, accordingly, direct the respondents to determine the seniority of the petitioners in the grade of Superintending Engineers from the date that they have been working in the said grade either on current duty charge / officiating basis, or from the date when the regular vacancy arose, whichever is later.

The respondents shall draw up eligibility and seniority lists and send the requisition to the UPSC for holding DPCs for the posts of Chief Engineer (Civil). The same principle would be followed for holding the DPC for the post of Engineer-in-Chief. Compliance shall be made within four weeks.

Petitions stand disposed of in the aforesaid terms.

VIPIN SANGHI, J

JYOTI SINGH, J

DECEMBER 11, 2018

sr