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

+ CONT.CAS(C) 672/2015

R B TOMAR

..... Petitioner

Through: Mr. Sitab Ali Chaudhary and
Mr. Prashant Sharma, Advs.

versus

P K GUPTA COMMISSIONER NORTH DELHI MUNICIPAL
CORPORATION & ANR.

..... Respondents

Through: Mrs. Biji Rajesh, Adv. for
Mr. Gaurang Kanth, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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14.03.2018

Additional affidavit filed by the respondent has been returned back by the Registry being late. The same has been handed over to the court, which is taken on record.

The present contempt petition has been filed by the petitioner alleging violation of order dated November 3, 2014 passed by this Court in W.P.587/2011. Suffice to state, the said writ petition was filed by the MCD and Ors. challenging the order of the Central Administrative Tribunal in TA No. 1154/2009 dated November 19, 2009, whereby the Tribunal had disposed of the TA with the following directions:

“6. TA stands disposed of with a direction to the respondents to consider the claim of the applicant for promotion as ALWO with effect from the date Shri K K Awasthi has been given promotion on notional basis.

In the event of promotion, applicant shall be given due seniority but he shall be placed below Shri V M John in the seniority list. Further consequences, as a result of this, shall be ensued to the applicant in accordance with rules and instructions on the subject. No costs.

5. In the light of the above, it is no more res integra that when junior of applicant has since been promoted, he has a right to be considered for promotion as ALWO from the date his junior has been promoted.

6. Insofar as the issue of non-availability of post is concerned, it is for the respondents to uphold the principle of equality enshrined under Article 14 of the Constitution of India and to devise such a methodology to effect these directions, keeping in view the eligibility of applicant, in accordance with the rules and instructions on the subject. TA stands disposed of with the above directions. Respondents are further directed to comply with these directions within a period of three months from the date of receipt of a copy of this order. No costs."

The High Court in Para 8 of the order of which non-compliance has been alleged held as under: -

"8. The following directions are, therefore, issued to the MCD:-

(i) The MCD is hereby directed to treat promotions from the post of ALWO to further higher grades made by it on ad hoc basis as regular, provided such promotions are made on the basis of evaluation in accordance with the rules, and so long as the individuals or incumbents holding such higher posts do so in accordance with their seniority. The resultant vacancies - free of liens, shall be taken into account for implementation of the CAT's order.

(ii) The MCD is also directed to treat all officers promoted as ALWO to further higher promotional

posts on ad hoc basis, and who have retired (against whom no disciplinary proceedings are pending post retirement), as regular incumbents at the time when they superannuated from the service. This shall also ensure that the posts so held and eventually vacated by such incumbents are treated as lien free.

(iii) Keeping the above directions in para Nos.(i) and (ii) in mind, a Review DPC shall be conducted for the cadre of ALWO post, in order to implement all orders of the CAT as affirmed by this Court. The result of such Review DPC would be to assign the concerned dates of promotion to those entitled to it in accordance with the rules and other terms and conditions of the service. It is made clear that, in the event any employee or any officer (including Sh. K.K. Awasthi) is deemed not entitled to promotion from a particular date but from a later date, and/or such officer has since retired from service, no consequential orders giving effect to reversion shall be made. Any such consequent orders will be made on purely notional basis. Such orders shall not adversely affect the pension or terminal benefits of such superannuated employees, or officers nor shall MCD seek to recover any excess amount paid to the officer on that account.”

It is the submission of the learned counsel for the petitioner that the petitioner has been promoted to the post of ALWO w.e.f October 8, 1999 when Mr. Krishan Kumar Awasthi, his junior was promoted. He has drawn my attention to a circular dated August 5, 2016 issued in that regard. According to him, respondents were required to consider the case of the petitioner for further promotion to the post of Assistant Commissioner / Additional Commissioner/ Deputy Commissioner as according to him one Junior to him Mr. Bhagwan Singh has since been promoted to the said posts of Assistant Commissioner w.e.f July 11, 2007; to the post of Additional

Deputy Commissioner w.e.f September 2, 2014 and to the post of Deputy Commissioner on February 19, 2016. It must be noted that the ground of the petitioner before the Central Administrative Tribunal seeking promotion to the post of ALWO was by seeking parity qua Mr. K.K. Awasthi. The said ground was upheld in favour of the petitioner herein. Even this court while considering the writ petition filed by the respondent MCD and Ors. has directed the conduct of review DPC to the cadre of ALWO only. There is no dispute that the petitioner has been granted cadre of ALWO w.e.f October 8, 1999 when Mr. K.K. Awasthi was promoted. There is no direction of the Tribunal or of this court for consideration of his case for further promotion(s). Surely, such a plea of the petitioner cannot be a subject matter of a contempt jurisdiction. I have been informed that petitioner has since been promoted as Assistant Commissioner on March 03, 2011, Additional Deputy Commissioner on January 10, 2017. Liberty shall be there with the petitioner to seek such remedy as available in accordance with law for promotion to the post of Deputy Commissioner from the date when his alleged junior Mr. Bhagwan Singh has been given the promotion. The contempt is closed. Notices discharged.

V. KAMESWAR RAO, J

MARCH 14, 2018/jg