

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

+ W.P.(C) 12156/2015 and CM APPL. 32299/2015 (stay)

Reserved on: 11.04.2018

Date of decision: 15.05.2018

IN THE MATTER OF:

DELHI STATE INDUSTRIAL AND INFRASTRUCTURE

DEVELOPMENT CORPORATION LIMITED AND ANRPetitioners

Through: Ms. Biji Rajesh, Ms. Eshita and
Mr. Diwankar Sethi, Advocates for Mr. Gaurang
Kanth, Advocate

versus

BHARAT AHUJA AND ANR

....Respondents

Through: Mr. R.A. Sharma, Advocate for R-1.
Ms. Shruti Munjal, proxy counsel for Mr. Ankur
Chhibber, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

HIMA KOHLI, J.

1. The petitioners, Delhi State Industrial and Infrastructure Development Corporation Limited (in short 'DSIIDC') have challenged the judgment dated 28.05.2015, passed by the Central Administrative Tribunal, allowing O.A. No.628/2014, filed by the respondent No.1, directing them to re-examine his case for promotion to the post of Chief Project Manager (Civil) (in short 'CPM') from the date his immediate junior was granted promotion, with all consequential benefits.

2. A glance at the relevant facts of the case is considered necessary. From 15.0.2001, the respondent No.1 was working in DSIIDC on the post of Assistant Executive Engineer (Civil) (in short 'AEE') on an *ad hoc* basis. Since 17.09.2008, he was holding current duty charge on the post of CPM (Civil). The respondent No.1 was regularized against the post of AEE (Civil) w.e.f. 15.02.2008 and from 17.09.2008, he was assigned the current duty charge on the post of Executive Engineer (Civil), (re-designated as 'CPM'). On 28.10.2009, the petitioners/DSIIDC issued a charge-sheet against the respondent No.1, contemplating initiation of major penalty proceedings against him.

3. On 23.07.2010, a DPC was held to consider the names of AEEs (Civil) for promotion to the post of CPM (Civil) on a regular basis. Though the name of the respondent No.1 was forwarded to the DPC, it was not considered due to the pending charge-sheet issued against him. On the recommendation of the DPC, a promotion order was issued promoting officers junior to the respondent No.1 to the subject post. On 20.12.2011, a minor penalty of 'censure' was imposed on the respondent No.1. However, subsequently, on 19.07.2013, the Appellate Authority exonerated the respondent No.1 of the charges. Thereafter, the respondent No.1 submitted a representation to the petitioners/DSIIDC for promoting him to the subject post, having been exonerated. On not receiving any reply, he approached the Tribunal by filing an Original Application praying *inter alia* that he be promoted to the post of CPM (Civil) from 23.07.2010, the date when his immediate junior, i.e., petitioner No.2 was promoted and grant him all consequential benefits.

4. The aforesaid Original Application was opposed by the petitioners, who filed a counter affidavit stating inter alia that the DPC was held on 23.07.2010, to consider the names of AEEs (Civil) for promotion to the post of CPM (Civil) on a regular basis but on account of the charge-sheet dated 28.10.2009 pending against the respondent No.1, the recommendations of the DPC were kept in a sealed cover. Though the petitioners/DSI IDC did not deny the fact that the minor penalty of 'censure' issued against the respondent No.1 in the disciplinary proceedings was recalled and he had been exonerated vide order dated 19.07.2013, it was pleaded that the respondent No.1 did not have vigilance clearance because another charge-sheet dated 20.06.2012, was issued in the meantime. Subsequently, a review DPC was held on 30.06.2014, for reviewing the recommendations of the DPCs that were conducted on 23.07.2010 and 12.09.2012. The review DPC noted that the respondent No.1 was ineligible for promotion to the subject post on the date when the initial DPC was conducted as he did not fulfill the eligibility criteria of possessing the length of seven years of service in the post of CPM (Civil), being a diploma holder. Resultantly, the review DPC took a decision to place the respondent No.1's name in a sealed cover on account of the pendency of the departmental inquiry initiated against him on the basis of the second charge-sheet dated 20.06.2012.

5. In the course of arguments before the Tribunal, the petitioners/DSI IDC were called upon to clarify as to why the respondent No.1 was found ineligible for the post of CPM (Civil) on 23.07.2010, the date when the first DPC was held for making promotions to the post of CPM (Civil). Pursuant thereto, the petitioners/DSI IDC filed an additional affidavit stating inter alia

that under the relevant Recruitment Rules, that were in existence prior to the revised Recruitment Rules notified on 27.11.2009, the respondent No.1 did not qualify the eligibility conditions for being considered by the DPC held on 23.07.2010 and inclusion of his name in the list of eligible candidates, was erroneous. It was stated that the Recruitment Rules were revised on 27.11.2009 and the review DPC had reviewed the earlier recommendations of the DPC by rectifying the inadvertent error. As a result, the petitioners/DSI IDC had modified the recommendations of the DPC held on 23.07.2010, with respect to the promotion of the immediate senior and the junior of the respondent No.1 on the post of Executive Engineer (Civil), to be effective from 14.09.2012 in place of 23.07.2010, subject to the outcome of the departmental proceedings pending against the respondent No.1. It is a matter of record that the respondent No.1 was finally exonerated in respect of the second charge-sheet dated 19.07.2013, during the pendency of the proceedings before the Tribunal. Armed with the said order, learned counsel for the respondent No.1 had argued before the Tribunal that there was no impediment in promoting his client to the post of Executive Engineer (Civil) on a regular basis w.e.f. 23.07.2010.

6. The aforesaid argument was countered by the petitioners/DSI IDC, who had argued that even though the respondent No.1 had been exonerated in the second departmental proceedings, he was ineligible for being considered by the DPC on 23.07.2010 since he did not possess seven years of required regular service for promotion under the existing Recruitment Rules; that he was only a diploma holder and lastly, that the charge-sheet dated

28.10.2009 was pending against him and he did not have a vigilance clearance due to the second charge-sheet issued to him on 20.06.2012.

7. On considering the pleas taken by both sides, the Tribunal had framed the following two issues:-

“(1) Whether the applicant was eligible for promotion in terms of the required length of service under the existing Recruitment Rules; and

(2) Whether the applicant can be considered for promotion based on the recommendation of the DPC since he was exonerated of the charge-sheet dated 28.10.2009 and finally exonerated vide order dated 19.07.2013.”

8. After examining the pleadings in the O.A. and considering the arguments advanced by the parties, the Tribunal opined that the respondent No.1 deserved to be considered for promotion on the basis of the recommendations of the DPC held on 23.07.2010 and that the second charge-sheet issued against him would not have any adverse effect on his promotion since the same was issued much after the date the DPC was held. Aggrieved by the said order, the petitioners/DSI IDC has filed the present petition.

9. Ms. Biji Rajesh, learned counsel for the petitioners argued before us that the Tribunal has fallen into an error by overlooking the fact that the respondent No.1 is a diploma holder and was appointed as a Junior Engineer vide letter dated 15.11.1988 and thereafter, vide letter dated 15.02.2001, he was promoted to the post of AEE on an *ad hoc* basis for a period of two years. Subsequently, vide office order dated 28.03.2005, the services of the respondent No.1 were regularized on the post of AEE and as per the extant Recruitment Rules for the post of Executive Engineer (Civil),

degree holders with four years experience and diploma holders with seven years experience are eligible for being considered. Since the respondent No.1's services were regularized on 28.03.2005 and being a diploma holder, he had only five years regular service in the feeder cadre on the date when the DPC was held, he was ineligible for being considered for promotion to the subject post. However, due to a bonafide inadvertence, his name as well as the names of one Mr. Pawan Kumar Sharma, senior to the respondent No.1 and Mr. Pramod Kumar Sharma, junior to the respondent No.1 were placed in the zone of consideration.

10. Learned counsel for the petitioner/DSI IDC further submitted that the said inadvertent mistake of placing the name of the respondent No.1 before the DPC held on 23.07.2010, was rectified in the review DPC held on 30.06.2014, wherein it was observed that *"Shri Bharat Ahuja is a diploma holder and does not fulfill the required 7 years of regular service as AE(C) as per Recruitment Rules, hence he was not eligible for promotion on 23.07.2010"*. She contended that later on, vide letter dated 11.11.2014, the petitioners/DSI IDC had issued a corrigendum to the earlier office order dated 27.07.2010 and revised the promotion of Mr. Mr. Pawan Kumar Sharma and Mr. Pramod Kumar Sharma to the post of Executive Engineer (Civil) from 23.07.2010, to 14.09.2012.

11. The limited issue that has been raised before us for assailing the impugned judgment is that the Tribunal erred in declaring that the respondent No.1 was eligible for promotion by holding that he had rendered service for seven years in the feeder cadre under the existing Recruitment Rules. To test the correctness of the said submission, it is necessary to examine the extant

Recruitment Rules in respect of the subject post, as followed till the year 2009, which were as follows:-

“Recruitment Rules for the post of Executive Engineer (Civil), [later re-designated as Chief Project Manager]

(a) Asst. Engineers/Surveyor of Works in the pay band of Rs.9300-34,800 + 5400 with at least 7 years of service in a grade.

(b) 33% quota for AEE(C) holding degree in Engineering or equivalent with minimum 4 years regular service in the grade for promotion.”

There is no dispute that the respondent No.1 falls in category (a), as above.

12. It has been averred by the petitioner/DSI IDC in their affidavit dated 10.07.2017 filed before the Tribunal, that during the year 2000, there were 22 sanctioned posts of AEE(C) and as on 22.09.2000, all the said posts were filled up. In the year 2000-01, DSI IDC was allotted the projects on relocation of industries from all over Delhi to Bawana and other industrial complexes of the Govt. of NCT of Delhi, which required additional manpower. In a meeting held on 15.12.2000, the Board of Directors of the petitioner/DSI IDC delegated full powers to the Empowered Committee of Directors to create additional posts, wherever required for timely implementation of the Relocation Scheme. In its meeting held on 03.01.2001, the Empowered Committee created certain posts in the Engineering Division on an *ad hoc* basis for two years and created 18 posts for AEE (Civil). In the meeting dated 07.02.2001 held by the DPC, the name of the respondent No.1 alongwith seven others was considered for *ad hoc* promotion to the post of AEE (Civil) and he was duly promoted to the said post. In the meeting of the

Board of Directors of the DSIIDC held on 28.10.2002, it was decided that “*Merit Pay Scale*” be granted to officers falling in Group A and B posts, who had completed seven years of service in the Grade Pay on the basis of their ACRs and the name of the respondent No.1 was included in the Office Order dated 04.03.2008, issued by the petitioner/DSIIDC. He was granted “*Merit Pay Scale*” in the next higher pay by counting the *ad hoc* period of service rendered by him on the post of AEE (Civil), w.e.f. 15.02.2001 to 15.02.2008.

13. On 23.03.2005, a DPC was held for filling up vacant posts of AEE (Civil) against regular vacancies and the name of the respondent No.1 alongwith four other officers was recommended. The respondent No.1 was duly promoted to the subject post w.e.f. 28.03.2005. Relying on the Recruitment Rules for the post of Executive Engineer (Civil), the petitioner/DSIIDC took a stand that for promotion to the subject post, an AEE (Civil) holding diploma, must have at least seven years of service in the grade to be eligible and since the posts of AEE (Civil) created by the petitioners in the year 2001 were on an *ad hoc* basis, the respondent No.1 could not claim regular promotion by counting the length of service rendered by him on the subject post, for claiming eligibility.

14. Counsel for the petitioners urged that wherever the word ‘*service*’ is used in the Recruitment Rules, the same connotes ‘*regular service*’ and since the respondent No.1 did not possess the requisite length of regular service in the feeder cadre, he was rightly declared ineligible in the review DPC for promotion to the post of Executive Engineer (Civil). In support of the aforesaid submission, she cited the following judgments:-

(i) N. Suresh Nathan and Anr. vs. UOI and Ors. reported as **AIR 1992 SC 564**;

(ii) K.P. Singh vs. MCD and Ors. reported as **237(2017) DLT 88**.

15. The aforesaid submissions were countered by learned counsel for the respondent No.1, who argued that his client met the eligibility criteria of possessing seven years of service on the post of AEE (Civil) and the petitioner/DSI IDC cannot draw any distinction between *ad hoc* and regular AEEs (Civil) since the nature of functions discharged by persons working on the said post and the responsibilities shouldered by them, are identical. He contended that on regularization of the respondent No.1 to the post of AEE (Civil) on 28.03.2005, his entire service on the subject post including the period during which he was discharging the duties as AEE (Civil) on an *ad hoc* basis, ought to have been taken into consideration for promoting him to the post of Executive Engineer (Civil) and once that is done, he fulfills the requirement of possessing seven years service in the grade, reckoned from 15.02.2001 to 15.02.2008. Much emphasis was laid by learned counsel for the respondent No.1 on the fact that as the word, 'service' used in the Recruitment Rules for the subject post was not preceded by the word 'regular', the same could not be permitted to be read into the Recruitment Rules. He stated that subsequently, in the year 2014, the petitioner/DSI IDC had amended the Recruitment Rules to the post of Executive Engineer (Civil) by prefixing the word 'service' to the word, 'regular' under the head of experience, which itself indicates that the word 'service' used in the earlier Recruitment Rules that were applicable to the present case, has to be read as it stood, without interpolating the word, 'regular' before the word, 'service'.

It was thus contended that the review DPC held on 30.01.2014, fell into a patent error by interpreting the word '*service*' used in the Recruitment Rules as '*regular service*' when the word, '*regular*' did not precede the word, '*service*' in the Recruitment Rules. To press home the said point, learned counsel for the respondent No.1 referred to the following decisions:-

(i) Marakkar vs. Kerala Public Service Commission and Ors. reported as **1987(1) SLR 758**.

(ii) D.K. Jain and Anr. Vs. DJB and Ors. reported as **121 (2005) DLT 401**.

(iii) Leela Sharma vs. GNCTD of Delhi and Ors. reported as **2012 (5) SLR 108 (Delhi)**

16. We have examined the impugned judgment, perused the records and given our careful consideration to the arguments addressed by the counsels for the parties.

17. There is no dispute about the fact that the extant Recruitment Rules in respect of the post of Executive Engineer (Civil), which is a 100% selection post, required an Assistant Engineer possessing a diploma certificate to have "*at least seven years of service in the grade*" whereas AEEs (Civil) holding a degree in engineering or equivalent, were required to possess "*minimum four years regular service in the grade for promotion*". The aforesaid distinction itself is a clear indication that while Assistant Engineers possessing a diploma certificate were required to possess at least seven years of service in the grade, AEEs (Civil) possessing a degree in engineering or equivalent, were required to possess experience of minimum four years with regular service in the grade for promotion.

18. The submission of the counsel for the petitioners that as a matter of practice in the DSIIDC over several years extended to all cadres and all posts, wherever the Recruitment Rules use the word '*service*', the same is understood as '*regular service*', is found to be unacceptable in the light of the extant Recruitment Rules for the subject post, which itself make a clear distinction between Assistant Engineers possessing a diploma certificate, who are required to have at least seven years of "service" in the grade vis-à-vis Assistant Engineers holding a degree in engineering, who are required to have a minimum of four years "regular service" in the grade for promotion.

19. In any case, such a plea cannot be taken by the petitioner/DSIIDC at this stage when no such defence was raised by it either in the counter affidavit or in the short affidavit filed before the Tribunal. The petitioners cannot be permitted to make good the above lacuna by relying on an affidavit filed by them pursuant to an order dated 08.03.2017, passed in the present proceedings. Vide order dated 08.03.2017, the petitioner was directed to file an affidavit explaining *inter alia* as to whether the *ad hoc* appointment of the respondent No.1 to the post of AEE on 15.02.2001, followed by his regular appointment on 28.03.2005, was in accordance with law, i.e., after holding the regular DPC, Recruitment Rules on the basis of seniority etc., cannot be permitted. The petitioner has exceeded its' brief by taking entirely new pleas in the affidavit dated 10.07.2017, beyond the directions that were issued on 08.03.2017, which is impermissible.

20. The Tribunal has held in favour of the respondent No.1 by relying on the decisions in the cases of Marakkar (supra) and D.K. Jain (supra) and expressed the following view:-

“17. The Recruitment Rules, which were applicable when the DPC met on 23.07.2010 provided that a diploma holder AEE [Civil] having rendered seven years of service in the grade of AEE [Civil] was required to be promoted to the post of EE [Civil]/CPM [Civil] whereas the requirement for degree holder AEE [Civil] was minimum four years of service in the grade of AEE [Civil]. Admittedly, the applicant had been given ad hoc promotion to the post of AEE [Civil] on 15.02.2001 on ad hoc basis. In the light of the aforementioned judgments, the word “service” used in the Recruitment Rules would include applicant’s service rendered as AEE (Civil) on ad-hoc basis. Accordingly, on 23.07.2010 when the DPC was held, if the ad hoc service were to be included, applicant would be found to have rendered more than nine years of service on that date. In the facts of the case of the applicant and in the light of the Recruitment Rules, the aforementioned judgments are relevant. In that case, the applicant would have to be considered as possessing more than the required seven years of service for promotion from the post of AEE [Civil] to the post of EE [Civil] on the date of the meeting of the DPC on 23.07.2010.”
(emphasis added)

21. In the case of Marakkar (supra), a Division Bench of the Kerala High Court was confronted with a similar situation as has arisen before us, where the respondent therein took a stand that the appellant did not possess the requisite period service of two years for the post of Assistant Engineer (Civil) and therefore was ineligible since the period of service relied upon by him was not continuous and rendered as a provisional employee. Turnings

down the said plea, the Kerala High Court had made the following observations:-

“3. The relevant portion of the first proviso to Note 3 below Rule 3 of the Special Rules for the Kerala Engineering Subordinate Service (General Branch) with which we are concerned, reads:

‘.....that in the case of First and Second grade Draftsmen/Overseers they should have rendered not less than two years service as First and Second Grade Overseers....’

The rule does not expressly require that the service should be continuous. No factors justifying inferences that the service should be continuous have been placed for our consideration. Hence in our opinion there is no justification for adding the word "continuous". That is also the view expressed by a learned Judge of this Court in Elyamma v. District Educational Officer (1965 K.L.T. 1185), wherein it is observed that the plain meaning of Rule 8 of Chapter XXVII of the Kerala Education Rules, 1959 considered in that case does not justify adding the word "continuous" to the rule. In other words, in the absence of good reasons it is not possible to add the word "continuous" to the word "service" used in the rule.

*4. It was however contended by Shri Kelu Nambiar, the learned counsel for the Public Service Commission, that the finding recorded by the learned Single Judge that the provisional service can be taken into account is not correct. **What is stated in the rule extracted above is that the candidates should have two years’ service in the specified position. The rule does not say as to whether the said service should be in a regular appointment, permanent appointment, temporary appointment, or provisional appointment. If the rule-making authority felt that it was only regular service and not the provisional service that should be taken into account, proper expression in that behalf would have been used. We find that***

the rule-making authority has used such an expression when it wanted to qualify the nature of the service. The rule regarding recruitment to the Public Works Department to the cadre of Attenders was amended in the year 1980 by Notification G.C.(P) No.81/80/PW&D dated 10.06.1980, prescribing under cl. (B) five years' regular service under the Government. It thus becomes clear that whenever the rule-making authority felt that it is only regular service that should count, it has chosen to use the expression 'regular'. As such an expression has not been used and that the only expression used is 'service', we find no justification to read into the rule the prefix 'regular'. Therefore, by question as to whether that familiarity or experience has been acquired by holding the post on a provisional, regular or other basis is not of any materiality. We have therefore no hesitation in taking the view that the expression 'service' used in the rule in question does entitle the appellant to count the service rendered by him on a provisional basis. If the service rendered by the appellant as a provisional employee along with the service rendered by him on a regular basis is taken into account, it is not disputed that the appellant would have the requisite period of two years of service and he would thus be fully qualified for the post. Hence it has to be held that the appellant was duly qualified and that the Public Service Commission was not right in not inviting the appellant for interview. ” (emphasis added)

22. In the case of D.K. Jain (supra), a Single Judge of this Court while examining the dispute relating to seniority between graduate and diploma holders in the Delhi Jal Board had observed that there was “no justification for not giving effect to the plain meaning of the phrase ‘service in the grade’ as connoting *ad hoc*, stop gap or temporary officiation on a consecutively

continuing basis”. Reproduced below are the observations made in the penultimate para of the said judgment:-

*“17. In this analysis once the disparity in educational qualifications is eradicated at the first promotional stage this corrective change would not come a day too soon. These views, however, are only a recommendation, since the Recruitment Rules have not been assailed. **Looking at the eligibility criteria set down for promotion to the post of Executive Engineer (Civil) the words "service in the grade" must be given their plain meaning. Continuous officiation in the post, while possessing all the essential criteria requisite for serving in the post where regular vacancies have arisen, mandates a reckoning service in the grade from the date on which the Petitioners commenced serving as Assistant Engineer (Civil). The consequence would be that on the day when the impugned Order was passed, that is, 17.6.2003, the Petitioners had already put in ten years of service in the feeder grade of Assistant Engineer and, therefore, there was no warrant whatsoever for giving current duty charge to persons junior to the Petitioners. This conclusion has been arrived at without disregarding the principle that temporary, ad hoc or current duty charge can, in exceptional cases, give an inference of seniority. In such an event the Establishment/Administration must make out a clear case justifying a departure from seniority and this must be clearly expressed in the Order itself.**”*
(emphasis added)

23. In our opinion, reliance placed by learned counsel for the petitioners on the case of K.P. Singh (supra), is misconceived inasmuch as the fact situation therein was entirely different. The petitioner in the said case had joined the service of the erstwhile MCD as an Assistant Engineer (Civil) and was given look after charge as Executive Engineer (Civil) w.e.f. November, 1994 and *ad hoc* charge on the same post alongwith 27 others in July, 1995. Aggrieved

by the provisional seniority list for making promotions to the post of Executive Engineer (Civil), where the petitioner was placed at Sr.No.13 on the basis that the date of his regular appointment to the said post being 09.01.1997, he had approached the Court claiming that his seniority should be reckoned from the date he was assigned look after charge of the said post, i.e., November, 1994 or at least when he was given *ad hoc* charge in July, 1995.

24. Answering the legal issue as to whether in the absence of rules relating to *inter se* seniority between promotees in the post of Executive Engineers, the petitioner's officiation on an *ad hoc* basis or on the basis of a look after charge ought to be counted, the co-ordinate Bench in the captioned case had referred to several decisions of the Supreme Court, where it has been observed that a fair and normal rule of seniority should ordinarily take into account the entire past service in whatever capacity, at the post if it is followed by confirmation, unless a contrary rule is shown. We may profitably refer to the observations made by the Supreme Court in the case of Delhi Water Supply and Sewage Disposal Committee and Ors. vs. R.K. Kashyap and Ors. reported as **1989 Supp (1) SCC 194**, which also find mention in the case of K.P. Singh (supra):-

“26. So much as regards to general principle governing seniority in service jurisprudence. There is, however, one other important and fundamental principle which should not be forgotten in any case. The principle of counting service in favour of one should not be violative of equality of opportunity enshrined in Articles 14 and 16 of the Constitution. If ad hoc appointment or temporary appointment is made without considering the claims of seniors in the cadre, the service rendered in such appointment should not be counted for

seniority in the cadre. The length of service in ad hoc appointment or stopgap arrangement made in the exigencies of service without considering the claims of all the eligible and suitable persons in the cadre ought not be reckoned for the purpose of determining the seniority in the promotional cadre. To give the benefit of such service to a favoured few would be contrary to the equality of opportunity enshrined in Articles 14 and 16 of the Constitution. But if the claims of all eligible candidates were considered at the time of ad hoc appointments and such appointments continued uninterruptedly till the regularisation of services by the Departmental Promotion Committee or the Public Service Commission there is no reason to exclude such service for determining the seniority. Of course, WP(C) No. 5864/2015 Page 5 of 9 if any statutory rule or executive order provides to the contrary, the rule or order will have supremacy. In the absence of any rule or order the length of service should be the basis to determine the seniority.” (emphasis added)

25. Thus, the words, ‘service in the grade’ used in the extant Recruitment Rules cannot be permitted to be reframed/reworded at the whims of the petitioners. The Recruitment Rules shall have to be read and interpreted as they stand, by giving it its plain and unambiguous meaning.

26. Further, learned counsel for the petitioner has not been able to draw our attention to any statutory rule or executive order that states that such a period of service should be excluded for determining the seniority of the respondent No.1. The alleged ‘past practice’ adopted by the petitioners/DSI IDC for considering only regular service for the purpose of making promotions, can neither be given a statutory colour nor does it have the flavour of an executive order that can be cited for excluding the period spent by the respondent No.1 on the subject post, on an *ad hoc* basis. Similarly, the plea taken that if the impugned judgment is sustained, it will

upset the *inter se* seniority in the cadre of Executive Engineers, is also found to be fallacious for the reason that all the eligible candidates for the subject post were duly considered in the DPC held on 07.02.2001 and only thereafter were they placed in the select list, maintaining their *inter se* seniority in the feeder cadre.

27. We also find merit in the submission made by learned counsel for the respondent No.1, who has relied on the minutes of the meeting of the Board of Directors dated 28.10.2002, to urge that when the period of seven years of service rendered by the respondent No.1 in the grade of Executive Engineer (Civil) could be taken into consideration for granting him “*Merit Pay Scale*”, then the petitioner/DSI IDC cannot be heard to state that the *ad hoc* period of service was never counted in the organization for extending any benefit to its employees in Group A and B.

28. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned judgment is backed by sound reasoning and judicial precedents and does not warrant any interference in judicial review. The present petition is accordingly dismissed alongwith the pending application, with no orders as to costs.

HIMA KOHLI, J

PRATIBHA RANI, J

MAY 15, 2018

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