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

% *Date of Decision: 6th December, 2019*

+ W.P.(C) 7909/2018

PAWAN SHARMA

..... Petitioner

Through: Mr.Atul K.Singh, Adv. along with the
petitioner in person

Versus

NORTH DELHI MUNICIPAL
CORPORATION AND ORS.

..... Respondents

Through: Mr.Mukesh Gupta, Standing Counsel
with Mr.Louis Daniel (HQ) for R-1/North DMC.
Ms.Mini Pushkarna, Standing Counsel with
Ms.Shiva Pandey, Ms.Swagata Bhuyan, Advs. for
R-7/EDMC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

1. This writ petition has been preferred as a public interest litigation with
the following prayers:-

“1. Issue the Writ of Mandamus or any other appropriate writ,
directing the respondents to effectively implement the circular
bearing number A.O/ENGG.(HQ)/NDMC /2015/760 dated
10.02.2015 issued by North Delhi Municipal Corporation.

2. Issue the Writ of mandamus directing the respondents
without any undue delay transfer the officials from one post,
wing, department to another as per the mandatory provision of
10.02.2015.

3. Issue the writ of mandamus, directing the respondents to initiate departmental enquiry against the officials for violating/non-compliances of circular dated 10.02.2015.”

2. Having heard the learned counsel for the parties and looking to the facts and circumstances of the case, it appears that the main grievance raised by the petitioner is the ineffective implementation of the circular dated 10th February, 2015 issued by the respondents (Annexure –A-1 to the memo of the writ petition).

3. It is submitted by the learned counsel for the petitioner that charge-sheeted (RDA) employees are being posted frequently in the Building Department which has been declared sensitive by Central Vigilance Commission and few of the officers have been holding their post in the same department/wing/zone for more than 6-10 years violating the circular dated 10th February, 2015. Learned counsel for the petitioner has also submitted that while issuing notice vide order dated 31st July, 2018, this Court directed the respondents to set out a list of transfers affected by them in the last 10 years with dates and also directed the respondents for a separate list of officers who have been charge-sheeted for disciplinary proceedings and still continue to work in the same zone/department where they were charge-sheeted.

4. We have heard the learned counsel appearing for the respondents. It has been stated in the additional affidavit filed by the respondent/North Delhi Municipal Corporation that they have already issued transfer-posting order in respect of 122 Engineers working in the jurisdiction of North Delhi Municipal Corporation. These facts have been stated at page 550 of the writ petition. Moreover, a detailed policy decision has been taken by SDMC

bearing Resolution No.183 dated 19th November, 2014. Paragraphs – V, VI and IX of the said policy decision read as under:-

“(v) It is submitted that as per the policy for the Engineers (Civil) it has been proposed that in a Block of 10-12 years tenure of any office, he/she shall be rotated amongst various wings of Engineering Department with the maximum tenure in a Wings/Zones as below.

S.No.	Desgn.	Maximum Tenure of an official in a wing				
		Bldg. Deptt.	Maint. Deptt.	EMS	Project	HQ(PC/Plg./Tec.lab/S W bldg.
1	Jr. Engineer	3 years (Max. 2 yrs in a zone)	5 years (Max 3 yrs in a Zone)	2 years	3 years (Max 2 years in a zone)	NIL
2	Asstt. Engineers	2 years	4 years (Max.2 years in a zone)	2 years	3 years	2 years
3	Executive Engineers	2 years	4 years (Max 2 years in a zone)	2 years	3 years	2 years

vi) That it has been, further laid down in the policy that no officer (JE/VE or EE) against whom an enquiry is pending or who is under currency of punishment in a Vigilance Case pertaining to Bldg. Department or that of corruption/moral turpitude should be posted in the Building Department which has been considered sensitive by Vigilance Department

xxx xxx xxx

(ix) List of Engineers of SDMC against whom RDA cases pending since trifurcation to till date is enclosed as Annexure 'R-6/2L It is submitted that none of them are working in the same place of posting department where they were charge

sheeted. It is further submitted that posting of incumbents in the Bldg. Department is subject clearance from Vigilance Department.”

5. In view of the aforesaid policy decision, there will be no chance of any employee continuing on the same post for several years, as a detailed and comprehensive transfer policy has been floated by the respondents. Moreover, looking to paragraph (ix) of the aforesaid policy decision of SDMC, it appears that charge-sheeted employees are not to be posted in the Building Department.

6. It is further submitted by the learned counsel for East Delhi Municipal Corporation (EDMC) that the average tenure of Junior Engineers, Assistant Engineers and Executive Engineers on a particular post has been specified in the letter of the Administrative Officer, Engineering Department (HQ), EDMC. A copy of the said letter is tendered to the Court and the same is taken on record. For ready reference, the aforesaid terms of particular post of different categories of the Engineers read as under:-

I. Average duration of JEs in a particular post.

a)	Building	-	2.06 years
b)	Maintenance	-	3.14 years
c)	EMS	-	2.31 years
d)	Project	-	2.23 years
e)	HQ	-	1.5 years

II. Average duration of AEs in a particular post.

a)	Building	-	2.76 years
b)	Maintenance	-	4.23 years
c)	EMS	-	1.42 years
d)	Project	-	3.5 years
e)	HQ	-	3.64 years

III. Average duration of EEs in a particular post.

a)	Building	-	2.36 years
b)	Maintenance	-	3.30 years
c)	EMS	-	1.87 years
d)	Project	-	3 years
e)	HQ	-	2.66 years

IV. SEs are not posted in a particular post. The SEs supervise the Engg. Sections of Building, Maintenance, EMS and project in the zones/departments assigned to them.”

7. Similarly, the NDMC have also taken a policy decision dated 6th February, 2019 pertaining to the transfer which has been narrated comprehensively in their affidavit. Moreover, as per the said policy decision, all the transfers are to be placed immediately before the Commissioner.

8. Thus, in view of the aforesaid steps taken by the respondents, we see no reason to further monitor this case for transfer and posting of the concerned officers. Suffice it to say for the respondents that the circular issued by them which are referred to in the writ petition and/or in the counter affidavits filed along with status reports shall be scrupulously followed.

9. It ought to be kept in mind that the transfer and posting of officers in question depends upon public need along with administrative exigencies. There cannot be a mathematical rule with statistical fine niceties to ensure that the officers be transferred immediately after their tenure is over. This is eventually not in the interest of public at large. It depends upon the nature of work associated with the post, the projects running in the hands of the said

officers and then the final decision is ultimately taken by the high ranking administrative officers. Hence, it might happen that depending upon the aforesaid factors, an officer has to continue on the same post for longer period. It is pertinent to mention that every rule is known by its exception.

10. Much has been argued out by the learned counsel for the petitioner regarding charge-sheeted employees posted in the Building Department. However, it appears that such posting of officers, whether charge sheeted or not, depends upon public need along with administrative exigencies. It ought to be kept in mind that charge-sheeted employees are also required to be posted at some department as no salary can be paid to them without giving any work. Moreover, If there is no suspension order against an employee, he can always be given posting depending upon the following factors:-

- (a) Nature of the post
- (b) Qualification of the said employee
- (c) Projects which are to be completed speedily and within time bound schedule
- (d) Nature of charges and the allegations against such employee; and also
- (e) Looking to the past service record of the said employee, etc.

11. The aforesaid list is not exhaustive. The policy decision to be taken by high ranking administrative officers to post a charge-sheeted employee is a complex administrative decision based upon the permutation and combination of the aforesaid and such other relevant factors. It ought to be kept in mind that always charge-sheeted employees cannot be treated at par

with suspended employees. Therefore, such type of employees are bound to be posted but that will depend upon the aforesaid aspects of the matter.

12. With the aforesaid observations, this writ petition is hereby disposed of.

CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 06, 2019
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