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

+ **W.P.(C) 1106/2018 and C.M. APPL. 4603/2018 (stay)**

NORTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Petitioners

Through: Mrs. Biji Rajesh, Ms. Aarti Mahto
Advocates for Mr. Gaurang Kanth,
Advocate.

versus

SANJAY HINGORANI AND ORS.

..... Respondents

Through: Mr. Rajeev Sharma, Advocate.

+ **W.P.(C) 2834/2018 and C.M. APPLs. 11402/2018 (addl. documents) and 11400/2018 (stay)**

KULBIR SINGH & ORS.

..... Petitioners

Through: Mr. Sumit Bansal, Mr. Prateek Kohli
and Mr. Akhil Dehlan, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through: Mr. Kumar Rajesh Singh and Ms.
Punam Singh, Advocates for R-1 to
R-4.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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07.01.2020

1. These are two petitions directed against the same order dated 20th August, 2015 passed by the Central Administrative Tribunal ('CAT') in O.A. No. 1603/2010.

W.P.(C) 1106/2018 & W.P.(C) 2834/2018

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2. The first petition being W.P.(C) 1106/2018 has been filed by the North Delhi Municipal Corporation ('North DMC') through its Commissioner, as well as the Additional Commissioner (Engineer) and the Director (Personnel). Respondent Nos. 1 to 21 are the original applicants, whereas Respondent Nos. 22 to 112 were private respondents in the said O.A.

3. The second petition being W.P.(C) 2834/2018 has been filed by some of the private respondents in the aforementioned O.A. No. 1603/2010.

4. The facts in brief are that the Petitioners in W.P.(C) 2834/2018 (i.e. the private respondents in O.A. No. 1603/2010 before the CAT) were engaged initially on muster roll basis and were subsequently given *ad hoc* appointment as Junior Engineer (Civil/Electrical) ['JE']. The issue of the regularization of their services was placed before the Union Public Service Commission ('UPSC') for its concurrence and for relaxation of the relevant Recruitment Rules ('RRs'). It is stated that the UPSC by a letter dated 28th July, 2003 "agreed to relax the recruitment Regulation Nos. 6, 7 and 10 in terms of Regulation 14 (Power to relax)" to enable the erstwhile Municipal Corporation of Delhi ('MCD') to implement the orders passed by this Court in writ petitions filed by the said private respondents seeking regularization.

5. It is stated that the Ad Hoc (Appointments, Promotions, Disciplinary and Allied Matters) Committee of the MCD by its Resolution dated 17th December, 2003 recommended regularization, which was approved by the MCD by its Resolution dated 12th January, 2004. Thereafter, the MCD appointed the aforementioned private respondents in O.A. No. 1603/2010

before the CAT as JEs on regular basis with effect from retrospective dates as mentioned against their names in the relevant office order dated 26th March, 2004. The said office order appointed 38 such JEs. Subsequently, the MCD passed another office order dated 13th June, 2005 pursuant to a Resolution dated 26th May, 2004, by which 53 more persons were regularized as JEs with retrospective effect after the relaxation of Regulation Nos. 6, 7 and 10 of the RRs. It must be noted that only such individuals who satisfied the educational/technical qualifications for the post of JE and who had been appointed *ad hoc* were asked to be regularized.

6. O.A. No. 1603/2010 came to be filed by Respondents 1 to 21 in W.P.(C) 1106/2018 challenging the aforementioned regularization orders as being illegal and unconstitutional. In the impugned order dated 20th August, 2015, the CAT has declined to interfere with the orders regularizing the services of the private respondents before it. The CAT followed the judgment of the Supreme Court in ***Dr. P. P. C. Rawani v. Union of India (1992) SCC 331*** and directed as under:

“36. Following the view taken by the Hon'ble Supreme Court in the aforementioned case, we dispose of the present Original Application with direction to the respondents to describe the private respondents herein as Junior Engineers (regularized) and to put them in a separate seniority block with their own seniority list, with all benefits of service including due promotions and give option to the applicants herein and to avoid their posting in such position where they may be required to work under the direct supervision of the said private respondents. No costs.”

7. It is significant that the original applicants before the CAT accepted the above order and did not question it. In other words, they accepted the

regularization of the private respondents in the aforementioned O.A.

8. As far as the North DMC is concerned, it has approached this Court aggrieved by the directions contained in paragraph 36 of the order of the CAT to place the original applicants in a separate seniority block and providing them the option to avoid a posting where they could be required to work under the direct supervision of the private respondents in the O.A.

9. The private respondents on the other hand have approached the Court with the accompanying writ petition on account of the plausible ambiguity in the directions contained in the impugned order of the CAT as regards the preparation of separate seniority lists.

10. During the pendency of the present petition in this Court, the original applicants in O.A. No. 1603/2010 filed a contempt petition being C.P. No. 73/2017 before the CAT. They contended that the North DMC had not complied with the directions issued by the CAT in its judgment dated 20th August, 2015. It was stated therein that by an order dated 6th February, 2018, the North DMC published a seniority list for the post of JE, "duly showing the private respondents in the OA in a block under the heading of 'JEs (Civil/Elect.) (Regularised)." The contention of the original applicants was that a separate seniority list for the private respondents on the one hand and the original applicants on the other should be drawn.

11. The aforementioned C.P. No. 73/2017 was disposed of by the CAT by an order dated 27th September, 2019, the relevant portion of which reads as under:

"7. It is necessary to mention that the Tribunal refused to interfere with the order of regularization as well as the seniority list. The direction issued is to the effect that the private respondents be described as "Junior Engineers (regularized)" and be put in the separate block in the seniority list. From the words "their own seniority list" the applicants intend to derive the meaning that the seniority list for "Junior Engineers (regularized)" must be "separate". That is not the connotation of the order in the O.A. The order refers to the seniority list of the Junior Engineers in general and not to separate lists within that category. Nowhere, it is mentioned that two separate lists must be maintained for the same post. At any rate, if the applicants are of the view that their seniority is affected in any manner, it shall be open to them to pursue the remedies, in accordance with law. We, therefore, close the CP.

Pending MAs, if any, stands disposed of."

12. The above clarification issued by the CAT has been accepted by the parties before this Court i.e. the North DMC, the original applicants in O.A. No. 1603/2010 as well as the private respondents in the said O.A. In other words, the clarification issued by the CAT that its judgment dated 20th August, 2015 did not envisage preparing separate seniority lists has been accepted by all the parties.

13. If that is the correct position, the direction issued by the CAT in the impugned order dated 20th August, 2015 that the original applicants should be given an option "to avoid their posting in such position where they may be required to work under the direct supervision of the said private respondents" appears to this Court to be not only unnecessary but even impermissible. If there is a common seniority list, it is plain that juniors in the said list would have to work subject to the seniors' supervision as and

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when consequential changes take place in the hierarchy within the organization. In other words, the question of giving an option to one set of employees to be given postings so that they may not work under the supervision of another set of employees senior to them is plainly untenable.

14. Consequently, the Court has no hesitation in setting aside the said direction issued by the CAT in the impugned order dated 20th August, 2015 giving the original applicants an option to avoid postings where they may be required to work under the direct supervision of the private respondents in O.A. No. 1603/2010. The Court further affirms the clarification issued by the CAT on 27th September, 2019 in C.P. No. 73/2017.

15. The petitions and pending applications are disposed of in the above terms.



S. MURALIDHAR, J.



TALWANT SINGH, J.

JANUARY 7, 2020

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